Alberta's Residential Tenancies Act

VOLUNTARY CODE of PRACTICE

ARTAC
Alberta Residential Tenancies Advisory Committee

November 2004
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Alberta
GOVERNMENT SERVICES

INTRODUCTION

PURPOSE:

This Code of Practice (the Code) is designed to explain the rights and responsibilities all tenants, landlords, and agents involved in renting residential premises in Alberta have under the *Residential Tenancies Act* and Regulations (RTA). The code will explain in detail the minimum legislated requirements set out in the RTA. It provides landlords and tenants with options to deal with matters not established as minimum requirements and makes residential tenancy resource material available in a user-friendly format.

HOW TO USE THIS CODE OF PRACTICE:

Words and terms that are commonly used in relation to tenancies and the RTA are defined in the Definition section at the beginning of this Code of Practice. The first time these words are used in the text in each module they will be ***bolded and italicized*** to let you know they are referenced in the Definitions. The modules include Statutory References, Guidelines, Practical Applications, Forms information and Case Law footnotes.

ACKNOWLEDGEMENT:

The amendments to the RTA are the result of a comprehensive two-year consultation process that included numerous tenant, landlord and advocacy groups as well as legal experts. A special thanks is extended to the Alberta Residential Tenancy Advisory Committee for their assistance in developing the Code of Practice and amending the RTA, which is law on November 1, 2004.

INFORMATION:

A current version of this Code of Practice can be viewed or printed from the website. To ensure you have the most current copy of the Code of Practice modules, check the date in the heading on each module at AGS website. http://www.gov.ab.ca/gs/information/landlord/

To purchase a copy of the new legislation from the Queen's Printer Bookstore in Edmonton or Calgary visit www.gov.ab.ca/qp/

Alberta Government Services is responsible for administering the RTA. The department receives complaints, conducts investigations and enforces the RTA. For information, contact the Consumer Information Call Centre:
Phone: 427-4088 (In Edmonton) Phone: 1-877-427-4088 (Toll-free in Alberta)
web: www.gov.ab.ca/gs/services/consumer - "How to File a Complaint"

Any questions you have about the RTA or Code of Practice can be e-mailed to rta@gov.ab.ca

UPDATES:

Alberta Government Services staff will review and revise the Code of Practice as necessary.

DISCLAIMER:

As a reference manual on residential tenancy matters, the Code does not set out everything in the RTA, nor does it state the law. Landlords and tenants should refer to the RTA to determine their legislative rights and obligations. In every instance, the law as set out in the RTA governs.

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DEFINITIONS ... NOVEMBER 1, 2004

There are a number of words that are commonly used in the RTA and in the rental business. Understanding what these words mean, and how they are used, is an important part of understanding what residential tenancies are all about.

These are plain language definitions for the commonly used terms in this Code of Practice. Any word or term that appears in bold italics in the Code of Practice is defined.

A

abandon — An action of a tenant who leaves the residential premises before the end of the tenancy, without giving notice to the landlord that they are leaving.

abandoned goods — Any property a tenant leaves behind after they move out of the residential premises.

abatement of rent — A reduction in the amount of rent a tenant is required to pay to the landlord. An abatement of rent can occur on a one-time-only basis; for a specified period of time; or be on-going.

agent — A person who has been given the authority by another person to undertake certain activities on their behalf.

- Examples include:
  - A leasing agent who is given the authority to enter into a residential tenancy agreement with a tenant on behalf of the landlord.
  - A building caretaker who is given the authority to enter the residential premises to make repairs on behalf of the landlord.

agreement — The promises a tenant and a landlord make to each other.

- An agreement can be in writing or spoken words.
- An agreement between landlords and tenants may be called "rental agreement", "lease agreement", "residential tenancy agreement" or sometimes simply, the "lease".
- In law, an agreement is a contract that is enforceable by the court.

assign or assignment — A person assigns their right or obligation to another person, or the written document that transfers a right or obligation.

- An example is the tenant in a fixed term tenancy wants to move out of the residential premises before the end of the residential tenancy agreement. The tenant finds someone else who will move in and take over the tenant's rights and obligations. The tenant wants to assign the residential tenancy agreement to this other person.

B

bailiff — See civil enforcement bailiff definition.

breach — Refers to breaking, or not keeping, one or more of the promises a tenant and landlord made to each other in the residential tenancy agreement.

- A breach can happen when either the tenant or the landlord doesn't do what they promised to do, or when they do something they promised not to do.

C

civil enforcement agency — A person who is authorized by agreement under the *Civil Enforcement Act* to operate as a civil enforcement agency.

- Civil enforcement agencies are privately owned and operated bailiff companies. They are authorized by the Sheriff on behalf of the Minister of Justice to carry out seizures on personal property, sell seized property, distribute proceeds from the sale of seized property, carry out evictions and carry out court orders.
- Look for them in the yellow pages under civil enforcement agencies.

civil enforcement bailiff — A person who has been appointed by the Sheriff under the *Civil Enforcement Act*. A civil enforcement bailiff has the authority to seize property that belongs to someone who owes money. Civil enforcement bailiffs are employed by or under contract to a civil enforcement agency and have the authority to seize personal property, remove seized property, carry out court orders and evictions.

common areas — Those parts of the residential premises that can be used by all tenants and are under the control of the landlord.

- Common areas may include hallways, stairs, and laundry rooms in apartment buildings.

consent — Means to give permission.

- An example of consent is that the landlord has to give permission to the tenant before the tenant can change the locks to the residential premises.
- Another example of consent would be the tenant giving permission to the landlord to enter the residential premises without notice to do an inspection or make repairs.

contract — The promises made by two or more people to each other, that each will do something that will benefit the other.

- In a contract, there must be agreement by all the persons on what they are promising each other.
- The residential tenancy agreement is a contract.
- In law, a contract is enforceable by the court.

control Refers to having the legal right to make a decision.

- An example of control is that the tenant can make the decision where to put their belongings inside the residential premises.
- Another example is that the landlord can make the decision what colour to paint the outside of the building.

court The Provincial Court of Alberta – Civil Division, or The Court of Queen's Bench of Alberta.

covenant A promise that is contained in a contract. The RTA says that in all residential tenancy agreements there are certain things the landlord and the tenant must do or not do. These responsibilities are treated the same as if they were covenants in the agreement – whether or not the agreement actually says anything about them.

D

damage Refers to harm to property or a person. The court decides if there has been damage and who caused it.

damage deposit See security deposit definition.

damages Refers to the amount of money that is needed to make things right when damage has been done. When the court decides there has been damage, and who caused it, the court also determines how much money is needed to make things right again.

distraint, distrain or ***distress*** The common law remedy of the landlord to seize the tenant's property through a civil enforcement agency when the tenant hasn't paid the rent.

- The landlord cannot use the remedy of distraint if the landlord has terminated the tenancy.

E

exclusive possession Having possession, control and use of the residential premises.

evict The procedure used to remove the tenant and their possessions from the residential premises when the tenant doesn't leave at the termination of tenancy.

evidence Any type of proof presented by the landlord or tenant including:

- Written documents (tenancy agreement, receipts, letters, pictures, witness statements).
- Photographs, videotape or audiotape and other physical evidence.
- Oral statements of the parties or witnesses.

F

fixed term tenancy

A tenancy that begins on a specific day, and ends on a specific day.

- **Neither the landlord nor the tenant has to give notice to the other party to end the fixed term tenancy agreement.**
- If the landlord agrees to allow the tenant to continue renting, the RTA says the tenancy automatically becomes a periodic tenancy, unless the landlord and tenant make a new residential tenancy agreement.

H

habitable

The residential premises must be fit for someone to live in.

- The *Public Health Act*, *Minimum Housing & Health Standards* and other *Regulations*, Bylaws and Codes, all set out requirements for the condition of premises where people live. If these requirements are not met, then the premises may be deemed not habitable.

I

inspection report

A written report that the landlord and the tenant do together at the beginning and end of the tenancy. The report records the condition of the residential premises before the tenant moves in, and after they move out. The inspection report done at the beginning is often called the move-in inspection report, and the one at the end is often called the move-out inspection report. The residential premises must be fit for someone to live in.

- The RTA says the inspection report has to be in writing; that both the landlord and tenant should be present when it is done; and that both should sign it after it is done.
- The RTA says the inspection report must include certain statements that must be signed within the report.
- A copy of the move-in and move-out inspection reports must be given to the tenant as soon as they are completed.

L

landlord

The legal owner of the residential premises, or some other person that has control of the residential premises.

- A property manager, leasing agent, caretaker, building manager, or any other person who controls whether someone can rent the place is a landlord.
- A person who, in law, has the same rights as the landlord is a landlord. Examples include the heirs of the landlord; secured creditors acting on their security; or someone who obtains ownership from the landlord.
- Any person who has a right of possession of the residential premises and the right to go to court to ask for enforcement of the landlord's rights is also a landlord. An example of this is a tenant who sublets the residential premises to somebody else.

M

maintenance Refers to looking after the residential premises. It includes keeping the premises reasonably clean and fixing things that need repair. Generally-speaking, unless the residential tenancy agreement says something different, the landlord is responsible for maintenance of the common areas and the tenant is responsible for maintenance of the inside of the residential premises.

month-to-month tenancy A periodic tenancy that automatically renews each month and is only ended by a notice from either the landlord or the tenant, stating that they intend to terminate the tenancy.

N

normal wear and tear The gradual worsening of the condition of property over time that happens even when the property is looked after properly.

- For example, even if walls are regularly washed and cared for, eventually over a number of years, they will have to be repainted. This is normal wear and tear. If the walls are not looked after, or holes are knocked in them, this is damage, and is not normal wear and tear.
- Another example is that carpets wear out over time and have to be replaced, even though they have been properly and regularly cleaned. This is normal wear and tear.
- Cigarette burns, oil stains, or pet stains in the carpet that require expensive cleaning or replacement of the carpet before it is worn out is damage and not normal wear and tear.

notice A written document from the landlord to the tenant, or from the tenant to the landlord, about something in the residential tenancy agreement. A notice should always be written, show the date of the notice, and be signed by the person giving the notice.

notice of entry A form that a landlord serves on a tenant when the landlord wants to enter the residential premises. Once a landlord has served the notice of entry, the RTA says that so long as it's for a reason stated in the RTA, and the proper notice period is given, the tenant has to allow the landlord into the residential premises at the time specified in the notice of entry.

- The tenant can, of course, consent to the landlord entering the residential premises at any time.
- The RTA says that a landlord does not have to give a notice of entry if the landlord has reasonable grounds to believe that there is an emergency in the residential premises, or that the tenant has abandoned the residential premises.

notice of objection to seizure A form that the civil enforcement bailiff gives to the tenant. The tenant can fill out the form and file it with the seizing civil enforcement agency within 15 days to object to the seizure.

notice of termination A form that a landlord or a tenant serves on the other party to end the tenancy.

notice to vacate A form that the landlord serves:

- on people who are not tenants and who are living in the residential premises with the tenant, and who are not authorized by the landlord to live in the residential premises (14-day notice).
- on people who are not tenants and who are living in the residential premises after the tenant has abandoned the residential premises (48-hour notice).

O

order of possession A document that a court gives to a landlord to direct a person to move out of the residential premises.

overholding tenant A tenant who does not move out when the tenancy has ended, and no longer has a right to be there.

- An example is the tenant who stays after the fixed term tenancy has come to an end, and there is no periodic tenancy that allows the tenant to stay in the residential premises.
- Another example is a tenant who does not obey a court order that says the tenancy is terminated.

P

peaceful enjoyment The right of the tenant while living in the residential premises, so long as they meet their obligations, not to be interfered with by the landlord and anyone acting for the landlord.

- This extends to interference from other tenants in the same building. It is the landlord's responsibility to take action if the tenant is causing problems for other tenants.

periodic tenancy A tenancy that ends automatically at the end of each week, month or year and then begins again automatically at the beginning of the next week, month or year.

prescribed A process that is stated in the Regulations. There are several instances in the *Residential Tenancies Act* that speak to something being prescribed. The Regulations are another form of law that is in addition to the law contained in the *Residential Tenancies Act*.

R

remedy Means, in law, when someone is able to go to court and ask the court to fix a problem they are having.

- An example is that the landlord is able to go to court and ask the court to give them an order of possession when the tenant has not paid the rent and will not move out.
- Another example is when the tenant repairs something in the residential premises that the landlord ought to have fixed. The tenant can go to court and ask for an abatement of rent or payment for performing the landlord's obligations.

rent Rent is normally an amount of money that the tenant agrees to pay to the landlord on a certain day for each tenancy period (weekly, monthly or yearly) that the tenant is living in the residential premises.

Rent can be anything of value that the tenant gives to the landlord, and the landlord takes, to allow the tenant to live in the residential premises.

repair Fixing something that's either broken or not working properly. It also means looking after the residential premises and the things in it so that they don't need fixing (keeping the place in good repair).

- The residential tenancy agreement should say what the landlord is responsible for looking after and repairing, and what the tenant is responsible for looking after and repairing.
- If the agreement does not speak to this issue, the landlord is usually responsible for the building structure (including windows, doors, walls, roof, ceilings, and floors), the plumbing, wiring, and heating and air conditioning (if there is any) and appliances provided by the landlord. This would also include the common areas unless the parties agree otherwise, which includes the hallways, utility and storage rooms, parking areas, sidewalks and landscaping (including lawn care and snow removal).
- The tenant is responsible to keep the inside of the residential premises clean and not cause any damage. Things like replacing burned out light bulbs and smoke detector batteries are the tenant's responsibility.

repudiation, repudiate To refuse to perform the right, duty, privilege or obligation owed to the other party under the contract.

residential premises The place the tenant rents from the landlord to live in. For the purpose of this Code of Practice, residential premises includes the yard of a single family, semi-detached or condominium dwelling, etc., or a yard, detached buildings such as a garage or a storage building, that is for the exclusive use of the tenant.

residential tenancy agreement

The contract between the tenant and the landlord to rent residential premises.

- This agreement can be in writing; it can be in spoken words; or it can even be implied from the situation.
- A verbal agreement is a contract between the landlord and the tenant that is not in writing.
- An implied agreement is a contract that is not agreed to verbally or in writing by the landlord and tenant. They act towards each other in a way that is the same as if they did have an actual agreement.

S

security deposit

Money or other items given by the tenant to the landlord at the beginning of the tenancy. The security deposit, sometimes called damage deposit, is held by the landlord and applied against any damage caused by the tenant during the tenancy or other obligations of the tenant to the landlord. The security deposit can also be applied against the amount of rent owed and not paid at the end of the tenancy.

- The security deposit cannot exceed the value of one month's rent. The landlord must hold security deposits in a separate bank account in trust for the tenant. The landlord must pay interest (as prescribed) on the security deposit either every year, or at the end of the tenancy.
- The RTA says that, at the end of the tenancy, the landlord cannot use any of the security deposit to pay for damage caused by a tenant, unless a move-in inspection report and a move-out inspection report has been completed.

{*See* Security Deposit module}

seize

To take possession of personal property through a legal process.

serve

To deliver a document, usually a notice, to someone.

- The RTA requires notices, orders and documents to be served personally, by registered or certified mail (also known as xpress Post Certified), or
  - On any adult who apparently resides with the tenant, or
  - By posting it in a conspicuous place on some part of the residential premises, or
  - Electronically.
- Security deposit refund cheques and statements of account can also be served by regular mail delivery.

statement of account A written document that the landlord gives to the tenant that itemizes interest earnings and deductions related to the tenant's security deposit. The landlord must provide the statement of account showing the actual costs, or an estimate of the expected costs, within 10 days of the end of the tenancy.

If an estimated statement of account is initially provided within the 10 days, the final statement of account and any remaining balance must be provided to the tenant within 30 days of the end of the tenancy.

substantial breach A breach of a covenant specified in the RTA. It can also be a series of breaches of the residential tenancy agreement that, added together, amount to a substantial breach or one serious breach of a covenant in the residential tenancy agreement.
{*See* Ending the Tenancy module}

T

tenancy The legal right to live in residential premises that someone else owns. A feature of a tenancy is that the tenant has, in law, the exclusive use of the residential premises. If the tenant lives up to their end of the residential tenancy agreement, the landlord has no right to interfere with the peaceful enjoyment of the residential premises.

tenancy month A period on which a periodic tenancy can be based. A tenancy month does not necessarily have to be a calendar month. As an example, the tenancy month may run from the 1st day of the month to the end of the month, but it may also run from the 15th day of one month to the 14th day of the next month.

tenancy week A period on which a periodic tenancy can be based. A tenancy week does not necessarily have to be a calendar week. As an example, the tenancy week may run from Monday to the next Sunday, but it may also run from Wednesday to the next Tuesday.

tenancy year A period on which a periodic tenancy can be based. A tenancy year does not necessarily have to be a calendar year. As an example, the tenancy year may run from January 1st to December 31st, but it may also run from July 1st to June 30th.

tenant — A person, or persons, who have permission to live in someone else's premises because they have a residential tenancy agreement. A tenant is also a person or persons who have permission to live in a place because of a sublet or assignment of a residential tenancy agreement. Included in the definition of tenant are the heirs of the tenant.

- The RTA sets out certain instances when a tenant who is no longer living in the residential premises is still considered the tenant for such purposes as: the move-out inspection report, abandoned goods, recovery of damages and return of a security deposit.

termination — The end of the tenancy and the residential tenancy agreement.

- In a fixed term tenancy, the termination date is specified in the tenancy agreement.
- In a periodic tenancy, termination happens when either the landlord or tenant gives the other a notice of termination of the tenancy.

trust account — Security deposits must be deposited into a trust account within 2 banking days after a tenant makes the payment to a landlord. Security deposit trust accounts have to be at a bank, treasury branch, credit union or trust corporation and must contain only security deposit money.

U

unit — A dwelling that is the subject of a residential tenancy agreement. Typically, a unit is an apartment in an apartment building, but it can also be a room in a hotel or boarding house, half of a duplex, or even a single house. For the purpose of this Code of Practice, a unit being rented includes the yard of a single family, semi-detached or condominium dwelling or a yard that is for the exclusive use of a tenant.

W

writ of possession — A document issued by the court directed to a civil enforcement agency to take possession of residential premises when the tenancy has been terminated and the tenant refuses to leave. This process is commonly referred to as an eviction.

RESIDENTIAL TENANCY AGREEMENT ... NOVEMBER 1, 2004

The residential tenancy agreement, whether written or oral, cannot take away any of the rights, benefits, or protections for tenants contained in the Act.

STATUTORY REFERENCES

Residential Tenancies Act (RTA) *sections:*

1(1)(e) fixed term tenancy definition
1(1)(f) landlord definition
1(1)(h) overholding tenant definition
1(1)(i) periodic tenancy definition
1(1)(k) rent definition
1(1)(l) residential premises definition
1(1)(m) residential tenancy agreement definition
1(1)(n), 43(1), 43(2) security deposit
1(1)(t) tenant definition
2 application
3 no waiver of rights
8 notice to terminate monthly tenancy
13 implied periodic tenancy
15 notice to terminate not required – fixed term tenancy
16 landlord's covenants
17 copy of agreement to tenant
18 notice of landlord
21 tenant's covenants
29 termination for substantial breach by tenant
38 possession unobtainable

There are no sections in the Regulations relating directly to "residential tenancy agreement".

GUIDELINES

Renting ***residential premises*** is a business ***agreement*** that includes both ***landlords*** and ***tenants***. Landlords and tenants agree to the terms of their business agreement in a ***contract*** called a ***residential tenancy agreement***. This residential tenancy agreement is the most important part of the landlord and tenant relationship and can be written, oral or implied.

Like other contracts, the residential tenancy agreement outlines the terms of the relationship that will exist between the landlord and the tenant. It also sets out any conditions that have been agreed to by the landlord and the tenant. For example: the ***rent*** amount, the services provided by the landlord and the responsibilities of both parties.

The tenant has the option of refusing to enter into a residential tenancy agreement that contains conditions they do not want to live by. The tenant may negotiate changes to the tenancy agreement or may choose to rent elsewhere.

The law is clear that once the landlord and the tenant both agree to the terms and conditions of the contract, it cannot be changed unless both parties agree.

To eliminate any "surprises" once the ***tenancy*** has begun, a residential tenancy agreement should be in writing and contain the following information:

a) date of agreement
b) names and addresses of all parties
c) address or description of the location of the residential premises
d) term of the tenancy
e) rent amount, where, when and how it is to be paid
f) clauses about whether utilities[1], furniture, appliances, parking, etc. are provided and at whose expense
g) names of the people who are permitted to live in the residential premises
h) ***security deposit***: amount, authorized deductions and interest
i) care, ***maintenance*** and ***repair*** responsibilities
j) insurance requirements
k) rules for additional fees (such as NSF charges), guests, pets, etc.
l) signatures of landlord and tenant.

The RTA requires a ***notice of landlord*** to be given to the tenant within 7 days after the tenant takes possession of the residential premises. The notice of landlord must contain the name of the landlord and a postal address and physical location in Alberta for that person. This information can be included in the residential tenancy agreement. If the name, postal address or physical location of the landlord changes, the landlord has to provide all tenants with a new written notice of landlord, which must contain all three elements to meet the requirements of the RTA. The landlord must either give a copy to each tenant, or, in the case of projects with common areas, display a new notice where all the tenants can see it. The landlord must ensure that the notice is replaced whenever the landlord becomes aware that the notice has been removed.

The RTA applies to tenants who rent residential premises such as houses, apartments, mobile homes and duplexes. It also applies to rooming house and boarding house

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[1] **Van Zant v. Thomson, 2002 ABQB 1077.** Justice Sterling Sanderman in the Court of Queen's Bench found the residential tenancy agreement was prepared by the landlord and accepted by the tenants. The responsibility of paying for certain utilities was clearly set out. The landlord was responsible for water and heat during the tenancy as per the agreement.

residents where the landlord provides both the room and meals, as long as the landlord does not reside in the residential premises. If a tenant pays to rent a room in a hotel or motel, etc., the RTA applies if the tenant lives there for more than six consecutive months.

The RTA does not apply to:

- mobile home sites covered in the *Mobile Home Sites Tenancies Act*
- business premises with living premises attached and rented under a single agreement
- rooms in the living quarters of a landlord, if the landlord actually resides there
- residential premises on military bases on federal lands
- residential premises on First Nations reserves on federal lands
- student premises at educational institutions, if students do not have ***exclusive possession*** of a self-contained dwelling
- a nursing home as defined in the *Nursing Homes Act*
- lodge accommodation run by a management body or by an agreement with the Minister responsible for the *Alberta Housing Act*
- a social care facility licensed under the *Social Care Facilities Licensing Act*
- a correctional institution
- or any other ***prescribed*** premises.

If an employer rents residential premises to an employee, the RTA applies.

If a written residential tenancy agreement is dated August 1, 1992 or later the agreement must contain the following statement in print larger than the other print in the agreement: "The tenancy created by this agreement is governed by the Residential Tenancies Act and if there is a conflict between this agreement and the Act, the Act prevails."

For example, if a residential tenancy agreement states that a tenant has to give two months' ***notice of termination*** for a monthly ***periodic tenancy*** agreement, this clause would be in conflict with the legislation. The RTA states that a monthly periodic tenant is required to give only one month's ***notice***.

Another conflict with the legislation would be if a residential tenancy agreement states that the tenant will have to move out immediately if the rent is not paid in full and on time. If tenants do not pay the rent, the RTA states that landlords may apply to ***court*** for an order terminating the tenancy and an ***order of possession*** or landlords can give tenants a 14-day notice to terminate the tenancy for ***substantial breach***.

Tenants and landlords should make a habit of keeping a written record of every instance when there is a problem with the other party, what was done by both of them when the problem happened, and how they each responded.

A landlord may choose to offer an ***abatement of rent*** to a tenant to compensate the tenant for doing ***maintenance*** for the residential premises. This agreement should be in writing to protect both parties.

In Alberta, all landlords and tenants have responsibilities (obligations). The RTA clearly identifies these obligations and they apply to every residential tenancy agreement in Alberta, whether or not they are mentioned in the terms and conditions.

Landlord's Obligations

- Make the premises available for the tenant on the agreed move-in date.
- Not to disturb the tenant's possession or ***peaceful enjoyment*** of the premises[2] [3] [4]. This means that the landlord is not to bother the tenant beyond what is necessary to do the landlord's business.
- Make sure the premises meet the minimum requirements set out in the Housing Regulation and the Minimum Housing and Health Standards under Alberta's *Public Health Act* at the beginning and during the tenancy. The Minimum Housing and Health Standards can be found on the Alberta Health and Wellness website. (www.health.gov.ab.ca/resources/publications/pdf/housing99.pdf)
- Complete move in-and move-out ***inspection reports*** and provide copies to the tenant.

Tenant's obligations

- Pay the rent on time.
- Be considerate of the landlord's and other tenants' rights.
- Not do anything that would put other tenants or the residential premises or common property in danger (example, do not let strangers into the building).
- Not perform illegal acts or do illegal business on the premises.
- Keep the premises reasonably clean.
- Not do, or permit ***damage*** to be done, to the residential premises.
- Move out when the residential tenancy agreement ends or is terminated.

The Act permits an oral residential tenancy agreement. Landlords and tenants are cautioned that the terms and conditions of an oral residential tenancy agreement are

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[2] **Sayers v. Lazaruk, 1998 ABPC 47.** Provincial Court Judge J.N. LeGrandeur ruled that the ***evidence*** must demonstrate an act of omission by the landlord caused the flooding of the basement of the residential premises before it can be said that the ***covenant*** for peaceful enjoyment is breached. The landlord did not intentionally cause the flooding of the premises, or intentionally interfere with the operation of the sump pump.

[3] **Snethun v. Carson, 1998 ABPC 49.** Provincial Court Judge J.N. LeGrandeur ruled that the landlord ***breached*** the landlord's covenant by entering the premises and changing the locks, with full knowledge that the tenant had not ***abandoned*** the premises. The landlord ***repudiated*** the tenancy and cannot have both the termination of the tenancy and the rent after the termination date.

[4] **Terrigno Investments Inc. v. Constant, 2003 ABQB 335.** Justice A.G. Park in the Court of Queen's Bench found the landlord vicariously liable when his son caused the police to forcibly break down the doors of the residential premises after the son misrepresented facts to the police that were later recanted.

difficult to "prove" in a court if a dispute arises between the parties. Any change that will become part of an existing residential tenancy agreement should be done in writing and be signed by both parties. The date that the change becomes effective should be stated.

The landlord must give the tenant a copy of the agreement within 21 days after the tenant signs and returns it to the landlord. If the landlord does not provide this signed copy to the tenant within the 21 days, the tenant is allowed to withhold payment of rent until a copy is received. Once the signed copy is delivered to the tenant, all the withheld rent is due and payable.

In addition to the rules in the residential tenancy agreement, the landlord may set up house rules for all the tenants. Both the landlord and tenant should have a copy of the rules. Some reasonable rules would be restricting Christmas trees, pets, satellite dishes, smoking or waterbeds. Landlords can change or add rules during the tenancy with the ***consent*** of the tenants. Landlords can change their "pet rules". If a landlord brings in a new "no pet rule", tenants who were allowed pets under the old rules can keep them, but cannot replace them.[5]

Tenants must get the written permission of landlords to sublet or ***assign*** the residential premises to another party. The landlord may not refuse permission without reasonable grounds. If the landlord decides against the sublease or ***assignment***, the landlord must give the tenant a written reason within 14 days after receiving the request. If the landlord does not answer the request within 14 days, the tenant may assume that the landlord agrees to the sublease or assignment.

In a sublease, the original tenant intends to return to the residential premises and resume the residential tenancy agreement. The original tenant gives all the obligations and rights of the residential tenancy agreement to the new tenant, for a time. The original tenant is still responsible to the landlord if the new tenant does not fulfill the obligations of the ***contract***.

In an assignment, the original tenant will not return to the residential premises. The original tenant gives all the obligations and rights for completing the residential tenancy agreement to the new tenant. The new tenant becomes responsible for the residential tenancy agreement.

PRACTICAL APPLICATIONS

Fixed Term Tenancy

A ***fixed term tenancy*** ends on the date specified in the residential tenancy agreement. No notice has to be given by the landlord or tenant to end a fixed term tenancy. It is courteous for the tenant and the landlord to provide the other party with a notice prior to moving out. No time frame is required for such a courtesy notice.

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[5] Adapted from Province of Manitoba, Residential Tenancies Branch Guidebook.

At the end of the fixed term the landlord and tenant may both want to continue the tenancy. At this time they can negotiate a new residential tenancy agreement that could include a change in the rent amount and the conditions of the tenancy. This agreement can be a new fixed term or changed to a periodic tenancy.

If the parties do not notify each other of their intention to continue or terminate the tenancy, difficulties may arise. For example, the landlord may be expecting the tenant to leave at the end of the fixed term and may have plans for the premises.

If the tenant continues to live in the premises after the fixed term agreement expires, continues to pay rent, but does not sign a new residential tenancy agreement; the tenancy becomes a periodic tenancy. Once this occurs, the tenant is required to give the landlord proper notice to terminate the tenancy.

Overholding Tenant

If the tenant stays in the premises without the landlord's approval, the tenant becomes an ***overholding tenant***. The landlord can apply to the courts for an order to recover possession of the property.

Implied Periodic Tenancy

The RTA states that an implied periodic tenancy is a combination of a fixed term tenancy and a periodic tenancy. It is the part of the tenancy that continues as a periodic tenancy after the fixed term period ends.

If the tenant stays in the premises after the end of the fixed term period with the implied ***consent*** of the landlord, the tenancy continues as a periodic tenancy. If the fixed term was for one month or more, the periodic tenancy becomes a monthly tenancy. If the fixed term was for less than one month, the periodic tenancy becomes a weekly tenancy.

The rules of periodic tenancies then apply to this tenancy. The tenant will have to give proper notice to terminate the residential tenancy agreement.

Periodic Tenancy

A periodic tenancy renews or continues weekly, monthly or yearly without notice. The ***termination*** and rent increase provisions contained in the RTA apply to the tenancy.

Additional Fees & Charges {See Additional Fees and Charges module}

The RTA does not prohibit the landlord and tenant from agreeing to fees and charges that are in addition to the security deposit and rent. Landlords should give receipts for any payments from tenants.

A landlord cannot charge a security deposit plus an additional "deposit", if the total amount exceeds the amount of the first month's rent.

- **Application Fees**

  A landlord may want to charge an **application fee**. An individual who does not want to pay such a fee does not have to apply to rent from that landlord.

- **Key or Pet Fees**

  A landlord may want to charge key or pet fees. A landlord may refer to these deposits as additional fees or charges. While these are not against the law, if they are refundable to the tenant, they are added to the security deposit amount. The grand total of all of the charges cannot exceed the amount of the first month's rent.

- **Refundable Fees**

  Any refundable fee or charge becomes part of the security deposit.

- **Non-Refundable Fees**

  Any non-refundable fee or charge is a contractual agreement between the landlord and the tenant and is not subject to the security deposit restrictions. Non-refundable fees cannot be deposited into the security deposit ***trust account***.

- **Late Payment of Rent Fees**

  Some residential tenancy agreements allow for a late payment of rent fee or a charge of a certain amount. The charge is usually a daily amount for each day the rent remains unpaid. The courts do allow for a genuine pre-estimate of liquidated ***damages***. For example, a bank may charge additional interest if a landlord is unable to make a loan payment because the tenant did not pay the rent on time. A late payment of rent fee that would cover the interest charged by the bank could be a valid pre-estimate of liquidated damages, if they exist. If however, the late payment of rent fee is far more than the amount the landlord is being charged, then it may be found by a court to be a penalty – and penalties are illegal.[6]

Pets

Some landlords allow pets in residential premises and usually state the conditions in the residential tenancy agreement.

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[6] **Cracknell v. Jeffrey, 2001 ABPC 11.** A decision of Provincial Court Judge J.N. LeGrandeur. In this case, the landlord claimed a "late payment fee" of $5.00 per day for 30 days, on unpaid rent ($150.00). The Judge carefully examined the law relating to "legitimate pre-estimate of liquidated ***damages***" and "penalties", and came to the conclusion that, in this instance, the so-called "late payment fee" was in law a "penalty", and as such would not be allowed by the Court. In summary, the Judge said, *[15] whether the sum claimed is a penalty or a genuine pre-estimate of* ***damage*** *is a question of law to be decided upon consideration of the whole agreement. (Reimer v. Rosen, [1919] 1 WWR 429, Man.C.A.) Although the parties to a* ***contract*** *may always try to make a pre-determination as to damages, should the contract be breached, this must always yield to judicial approval of its reasonableness in the circumstances. (See: H.F.Clarke Ltd. v. Thermidaire Corporation Ltd., (1975) 54 DLR (3d) 385 per Laskin, CJC at 393) That approach is consistent with the principle that an injured party is entitled to be compensated and made whole, but not bettered by a damage award. (See: Neunier v. Cloutier, (1984) 9 DLR (4th) 986).*

Other landlords include a "no pet" provision in a residential tenancy agreement because:

1. ***units*** in which pets have been kept often require more extensive cleaning, repainting, repair, and replacement of items, than do units where there have not been pets; and,
2. other tenants may have allergies to certain animals, or are sensitive to the noise or behaviour of some animals.

There is a difference between a goldfish and a large dog; between a canary and a cat; between a hamster and a python. There are many animals that are kept as pets that are important to their owner that do not, or are not, likely to cause any additional cost or expense to the landlord, or aggravation to other tenants.

Some residential tenancy agreements have clauses prohibiting pets in a unit unless the landlord specifically and in writing allows a particular pet.

If a tenant signs a residential tenancy agreement agreeing to a "no pet" policy, and the tenant brings in a pet later on without the landlord's permission, the tenant is in violation of the contract. This violation could result in the landlord terminating the tenancy.

FORMS

Residential tenancy agreement forms are available at a nominal cost from a number of organizations including the Landlord and Tenant Advisory Boards, the Calgary Apartment Association or the Edmonton Apartment Association.

Since the *Residential Tenancies Act* does not prescribe a particular form of residential tenancy agreement, landlords and tenants are free to prepare whatever form best suits their particular needs. However, the agreement cannot take away any of the rights, benefits or protections contained in the Act.

SECURITY DEPOSIT ... NOVEMBER 1, 2004

STATUTORY REFERENCES

Residential Tenancies Act (RTA) *sections:*

1(1)(f) landlord definition
1(1)(k) rent definition
1(1)(l) residential premises definition
1(1)(m) residential tenancy agreement definition
1(1)(n) security deposit definition
1(1)(t) tenant definition
19 inspection report
43 amount of security deposit
44 trust account
45 interest on security deposits
46 return of security deposits
47 obligations and rights of new landlord

Residential Tenancies Ministerial Regulation sections:

1(c) security deposit trust account definition
4 inspection reports
7 trustee of security deposit trust account

Security Deposit Interest Rate Regulation (all sections)

GUIDELINES

A ***landlord*** can ask a ***tenant*** to pay a ***security deposit***, which is an amount of money paid by a tenant in addition to the ***rent*** that is due. The landlord holds the deposit as security for damage, cleaning costs, unpaid rent or other obligations the tenant may have to the landlord. A security deposit is sometimes referred to as a ***damage deposit***. The tenant's basic obligations are to look after the ***residential premises*** and pay the rent when it is due. If no rent is owing, no damage has been done and the residential premises has been cleaned, the money must be returned with interest after the tenant moves out.

Security Deposit Definition

A landlord can collect a security deposit at the beginning of the ***tenancy***. A security deposit can be money, or an item other than money that is agreed to by the landlord and the tenant. The value of the item should be equal in value to the amount of the security deposit. This ***agreement*** should be in writing.

The purpose of a security deposit is:

- To cover the landlord's costs of repairing or replacing physical damage to premises.
- To cover the costs of cleaning because of extraordinary or abnormal use. This does not include cleaning associated with ***normal wear and tear***.
- To cover any arrears of rental payments.
- To cover other costs agreed to by the tenant in the ***residential tenancy agreement***, such as legal fees, utilities, late fees, etc.

Amount of Security Deposit

A security deposit cannot exceed the monthly amount of rent for the first month of the residential tenancy agreement. It cannot be increased at any time during the tenancy, even if the monthly rent is increased later. {*See* the next section "Increase of security deposits"}. If a residential tenancy agreement contains a clause that requires a security deposit in excess of one month's rent, that clause is illegal and unenforceable. The tenancy agreement cannot take away the protection provided by the RTA.

A landlord should give a tenant a receipt for the security deposit and any other payments that are received from the tenant.

A refundable fee or charge is part of the security deposit. A landlord cannot charge additional refundable fees, i.e. for an extra parking stall, if the total of the security deposit and the additional refundable fees to be paid by the tenant exceeds one month's rent. {*See* Additional Fees and Charges module}

A non-refundable fee or charge that is agreed to in the residential tenancy agreement is not subject to the security deposit restrictions. Non-refundable fees cannot be deposited into the security deposit ***trust account***. For example, if a landlord charges $100 per pet as a non-refundable fee for the privilege of having a pet in the premises, this fee will not be held by the landlord as security, and will not be returned to the tenant. It is not a security deposit as defined by the RTA.

Some residential tenancy agreements include a "late rent charge". If the tenant does not pay the late rent charge and if the charge is reasonable, the landlord is entitled to deduct the charge from the tenant's security deposit at the end of the tenancy[7].

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[7] **Cracknell v. Jeffrey, 2001 ABPC 11.** A decision of Provincial Court Judge J.N. LeGrandeur. In this case, the landlord claimed a "late payment fee" of $5.00 per day for 30 days, on unpaid rent ($150.00). The Judge carefully examined the law relating to "legitimate pre-estimate of liquidated damages" and "penalties", and came to the conclusion that, in this instance, the so-called "late payment fee" was in law a "penalty", and as such would not be allowed by the Court. In summary, the Judge said, *[15] whether the sum claimed is a penalty or a genuine pre-*

Increase of Security Deposits

A security deposit cannot be increased during the term of a tenancy.

- **Periodic Tenancy**

  If a ***periodic tenancy*** agreement has a "0", "nil", or "zero" in the space for the security deposit, or, if the space is blank, a landlord cannot later charge a security deposit as this would be an "increase".

  If a tenant paid a security deposit of $400 two years ago, and the rent has since increased on two occasions, first to $425 and now to $450, the amount of the security deposit must stay at $400.

- **Fixed Term Tenancy - New Agreements**

  Both parties can negotiate and agree to enter into a new ***fixed term tenancy*** agreement that contains provisions for an increase in the rent and security deposit.

Trust Account

All security deposits collected since August 1, 1992 must be deposited in an interest-bearing trust account. The security deposit must be deposited into the trust account within 2 banking days after the tenant makes the payment to the landlord. Security deposits received before August 1, 1992 can be deposited in the trust account, but it is not required by the RTA. The trust account has to be at a bank, treasury branch, credit union or trust corporation and must contain only security deposit money.

The landlord is the trustee for the tenant's security deposit money and the trust account name must include the words "in trust". The name on the account may refer to the landlord name, the building name or the tenant name, etc. An example is "ABC Rental Company, in trust".

Interest on Deposits

Interest on the security deposit must be paid to the tenant annually unless the landlord and tenant agree in writing that it will be paid when the tenancy ends. The interest must be compounded annually on the anniversary date of the tenancy if it's not paid annually to the tenant.

The rate of interest to be paid is set annually by the Government of Alberta. The formula for setting the yearly interest rate payable on security deposits is 3% less than the cashable one-year guaranteed investment certificates rate in effect on November 1 of

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estimate of damage is a question of law to be decided upon consideration of the whole agreement. (Reimer v. Rosen, [1919] 1 WWR 429, Man.C.A.) Although the parties to a contract may always try to make a pre-determination as to damages, should the contract be breached, this must always yield to judicial approval of its reasonableness in the circumstances. (See: H.F.Clarke Ltd. v. Thermidaire Corporation Ltd., (1975) 54 DLR (3d) 385 per Laskin, CJC at 393) That approach is consistent with the principle that an injured party is entitled to be compensated and made whole, but not bettered by a damage award. (See: Neunier v. Cloutier, (1984) 9 DLR (4th) 986).

the previous year offered by Alberta Treasury Branches Financial. A landlord may agree in a residential tenancy agreement to pay a higher interest rate. The landlord is then bound to pay the tenant interest on the security deposit and the compounding interest at the higher rate.

Security Deposit Calculator

An on-line calculator that is programmed to calculate the interest payable on security deposits at the ***prescribed*** annual rates is available at the Alberta Government Services website. (http://www.gov.ab.ca/gs/information/landlord/interest/index.cfm)

Return of Security Deposits

The security deposit is "delivered" to a tenant on either the date it is handed to the tenant, or his ***agent***, or the date of the postmark.

When a joint tenancy exists, a landlord must return the security deposit through a cheque made out to all tenants and not to one particular tenant. The RTA is specific in requiring the security deposit to be returned to the tenant, and in the case of a joint tenancy every tenant is equal.

Other than for normal wear and tear, a landlord is entitled to deduct the cost of cleaning the residential premises as well as for repairing or replacing damaged property. The RTA defines normal wear and tear as the deterioration that occurs over time with the use of the premises, even though the premises receive reasonable care and ***maintenance***.

If there is any rent due and owing at the end of the tenancy, that amount can also be deducted from the security deposit. Some tenants "fail" to pay the rent for the last month of the tenancy, reasoning that the landlord "can use the security deposit to cover the last month's rent". This reasoning is incorrect and will almost always lead to additional cost and expense for both the landlord and the tenant if the matter ends up in ***court***.

If a tenant does not pay rent for the last month, a landlord can:

- ***serve*** a tenant with a clear 14-day eviction ***notice*** for non-payment of rent,
- obtain a Distress for Rent through a ***civil enforcement agency*** [8], or
- request an ***Order of Possession*** through the courts.

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[8] **Lansdowne Equity Ventures Ltd. v. Sandra Folland and Mike Davis, 2000 ABQB 809.** A decision of Master K.R. Laycock that discusses the issue of distress and termination of the tenancy. In this case, the landlord served a 14-day notice to terminate, and then seized property in distraint before the 14 days had expired. The tenant objected on the basis that the landlord, in serving the 14-day notice, had effectively terminated the tenancy at that point, and was not entitled to a ***remedy*** of distress. The Master held that while it is true that if the tenancy has ended the landlord cannot then distrain, where the landlord has served the 14-day notice to terminate and distrains before the 14 days have expired, the distraint is valid as the *Residential Tenancies Act* provides that the tenancy continues up to the 14th day from the date the notice was served.

If the landlord is entitled to be reimbursed for cleaning or ***repair*** costs and the security deposit is not available for that purpose, the landlord can sue the tenant to recover the cleaning and repair costs.

If there are amounts set out in the residential tenancy agreement that are due and owing by the tenant for other costs, such as legal fees, utilities, late fees, etc., those amounts can also be deducted from the security deposit.

A landlord must, within 10 days of the tenant giving up possession of the residential premises, either pay the security deposit plus interest to the tenant, or provide a s***tatement of account*** that shows what the costs were, or provide an estimate of what the costs are expected to be. A final statement of account and any remaining balance must be provided to the tenant within 30 days after the tenancy ends.[9]

The statement of account should show the tenant's name, rental premises, amount of security deposit, accrued interest, deductions from the deposit and the balance being returned, if any, or the amount owing if a negative balance.

The landlord has to personally deliver or send by registered, certified or regular mail to the forwarding address of the tenant, the security deposit refund cheque and/or the statement of account. If no forwarding address was left with the landlord, the landlord is responsible for attempting to locate the tenant. The cheque/statement of account is to be mailed to the last known address of the tenant, which may be the rented premises. If the mail is returned as undeliverable, the landlord is to keep the returned item for their records, as it is the tenant's money.

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[9] **Lyman v. 637568 Alberta Ltd., 1999 ABPC 74.** A decision of the Provincial Court Assistant Chief Judge Donald E. Patterson. The tenant sued the landlord for return of a $600.00 security deposit, notwithstanding her admission to the court that her boyfriend had been responsible for some $20,000.00 damage to the building. Additionally, the tenant was responsible for a cricket infestation of the building, having brought live crickets into her suite as food for a pet gecko, and 3 consecutive rent cheques had been returned N.S.F.

However, after serving the tenant a Notice to Vacate, and the tenant vacating the place, the landlord had failed to return the security deposit or provide a statement of account within the 10 days specified by the Act, and this formed the basis for the tenant's claim for return of the security deposit.

After first concluding that the failure of the landlord to comply with the provisions of *RTA section 48(2)* precluded the landlord from making a deduction from the security deposit, the Judge went on to decide that because the tenant had brought the action under *s. 48(3)*, then pursuant to *s. 48(4)* the court was entitled to determine the actual damages suffered by the landlord that it would have been entitled to deduct from the security deposit, had *s. 48(2)* been complied with. In this instance, the actual damages exceeded the amount of the security deposit, so the landlord was entitled to judgment for the balance left owing after deducting the full amount of the security deposit from the damages.

Also of some interest in this case is that the landlord claimed a "late rent charge" of $10.00 a day for the days between the time the tenant's 3 cheques were returned N.S.F. and she made good on them. The Judge, without any reason given, did not allow this claim by the landlord.

Landlords have to keep security deposit records that show the following for each tenant for at least 3 years after the expiration or ***termination*** of the tenancy:

- the date of receipt of a security deposit by the landlord and the amount of the security deposit,
- the date on which the security deposit was deposited in a financial institution and the name and location of the financial institution,
- particulars of the interest payable and paid to the tenant, and
- particulars of the disposition of the security deposit under section 46, including the manner in which the security deposit or part of it was delivered to the tenant,
- make the security deposit records available for inspection by the Director or an authorized person for the purposes of an inspection or investigation.

A landlord has the right to keep part or all of the security deposit to cover costs that result from the tenant not meeting their basic obligations. If the total costs exceed the security deposit and the tenant does not pay them, the landlord can go to court to claim for the money owed.

If the tenant does not receive either the security deposit, a statement of account or an estimated statement of account within the 10 days after they leave, the tenant should immediately contact the landlord, in writing (and keep a copy), requesting the security deposit and a statement of account. A tenant could proceed through the courts to get the security deposit back if:

- a tenant still does not get anything from the landlord after requesting it, or
- a landlord deducts amounts from the security deposit that were not specified in the residential tenancy agreement, or
- a landlord deducts amounts from the security deposit that were for normal wear and tear, or
- the requirements for ***inspection reports*** were not complied with.

Inspection Report

A landlord cannot make deductions from a security deposit for restoring or repairing costs resulting from normal wear and tear,[10] even if there is a clause saying the opposite in the residential tenancy agreement. The RTA protects the security deposit from deductions for normal wear and tear by requiring landlords to complete move-in and move-out inspection reports. These reports allow the landlord and tenant to determine whether there are repairs or extra cleaning required. If the inspection reports are not completed, the landlord cannot make deductions from the security deposit to cover cleaning or repair costs. However, if there is such a clause in the residential tenancy agreement, it will allow the landlord to sue the tenant for the charges agreed to.

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[10] **MacNeill v. North American Leaseholds Ltd., AB 1980, 118 D.L.R. (3d) pp. 37-39.** Provincial Court Judge D. E. Patterson found that in this case, the condition of the carpets and drapes was clearly caused by normal use only. The landlord could not deduct for further professional cleaning. The tenant was not excused from usual and ordinary cleaning or cleaning up from abnormal use. The landlord appealed the decision and Court of Queen's Bench Justice J. Stevenson dismissed the appeal.

Tenants should leave all smoke detector batteries and light bulbs in working order. A tenant is responsible for ordinary cleaning and for cleaning that is the result of extraordinary or abnormal use. {*See* Inspection Reports module for cleaning list} Some examples of damages and deficiencies to the physical condition of rental premises for which deductions can be made when inspection reports are properly completed are:

- steam cleaning of rugs with obvious dirt, soil, oil or urine stains or holes
- badly repaired holes in walls
- pushed in door panels
- food, dirt or nicotine on walls, cupboards or appliances
- broken windows
- holes in window screens
- garbage or litter strewn about
- pet excrements.

Thus, a landlord can deduct for such things as obvious dirt, soil, etc., as long as the inspection reports were completed. Removal of accumulation of foreign material does not constitute a deduction for normal wear and tear. Some examples of normal wear and tear for which deductions are not allowable when inspection reports are properly completed are:

- professional shampooing of rugs, when there were no excess foreign materials
- professional cleaning of drapes, when there were no excess foreign materials.

A landlord cannot make any deductions from a security deposit for ***damage***, including cleaning, to the residential premises if the landlord and tenant *did not* complete the move-in and move-out inspection reports. These inspection reports must be done within 1 week before or after the tenant moves in, and within 1 week before or after the tenant moves out[11]. The inspection report must include the statements and applicable signatures as required in the Residential Tenancies Ministerial Regulation before any deduction for damages is allowed from the security deposits.

The landlord can complete the inspection report without the tenant if the tenant either refused to, or did not take part in, one of two inspection times suggested by the landlord. The suggested inspection times must be on two different days that are not holidays, and be scheduled between 8:00 am and 8:00 pm.

The statements for inspection reports that are mandatory in the Residential Tenancies Ministerial Regulation have to be completed. {*See* Inspection Reports module}

If a landlord believes the tenant has ***abandoned*** the residential premises, the landlord must still make a reasonable effort to contact the tenant and arrange the inspection. A record should be kept of the attempted contacts. Some examples of reasonable efforts

[11] **Corlis v. St. Croix, 2002 ABPC 19.** Provincial Court Judge A.H. Lefever reviewed the legislation and previous decisions and concluded that while the landlord may not apply security deposit monies to repairs and cleaning when there have not been the required inspections, no general limitation is created to stop a landlord from starting an action for damages because of alleged breaches of a residential tenancy agreement.

to contact the tenant are checking with references on the application form, their employer, relatives and neighbors.

If there are rent arrears, the security deposit can be used towards the arrears even if inspection reports have not been completed. Other deductions, like NSF fees, that are not dependent on inspection reports being properly completed, can also be made.

If a landlord does not do the required inspection reports, a landlord can apply to court for a judgment for the debt owed by the tenant.

Obligations and Rights of New Landlord

Any person who acquires the landlord's interest in the residential premises is subject to the same rights and obligations concerning security deposits as the previous landlord.

In the event that the landlord of the residential premises changes, the new landlord has to deposit any security deposits that are turned over by the prior landlord, into a new security deposit trust account.

If the prior landlord does not turn the security deposits over, the new landlord is still responsible for the security deposit refunds. The RTA requires the new landlord to refund the deposits at the end of the residential tenancy agreement[12]. Failure to receive the security deposits from the prior landlord or owner cannot be used as grounds for non-return of a security deposit.

For example, if the apartment building goes into foreclosure and the receiver-manager chooses not to ask a tenant to move out, the receiver-manager is responsible for carrying out a landlord's obligations, including refunding security deposits at the end of the residential tenancy agreement.[13]

A buyer of the residential premises is also fully responsible for the security deposit paid by the tenant.

The new landlord is required, within a reasonable time and at no cost to the tenant, to give the tenant a statement setting out the amount of the security deposit and interest that has accumulated as of the date title transfers.

Canada Deposit Insurance Corporation (C.D.I.C. Act) Pooled Trust Accounts

The RTA requires security deposits to be placed into interest bearing trust accounts in Alberta within 2 banking days of receipt. Only security deposit monies can be placed in

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[12] **R. v. Touche Ross Limited et al., (AB, 1985) Q.B. #8503-0034-56.** Receiver Managers appointed by court order incur the landlord's responsibility for refunding security deposits. The Alberta Court of Appeal dismissed the appeal of this judgment.

[13] **Waverly Management Ltd. v. Sobie and Dunn, AB 1985, 39 Alta. L.R. (2D) pp. 51-59.** Waverly was appointed receiver manager through foreclosure proceedings and refused to refund the tenant's security deposit. Provincial Court Judge Irwin Blackstone found Waverly responsible for the security deposit refund under the tenancy legislation even though the deposits were not obtained from the former landlord. Waverly's appeal was dismissed.

this trust account. In Alberta, security deposit trust accounts with banks, trust companies and loan companies are insured to a limit of $60,000.

The insurance protection for funds deposited in banks, trust companies and loan companies is provided by the C.D.I.C. Act. Funds on deposit are insured up to a limit of $60,000 in the event of failure of a financial institution. The C.D.I.C. Act does not cover funds on deposit with a credit union or Alberta Treasury Branch. However the Alberta Government, through the Credit Union Deposit Guarantee Corporation, protects all deposits with credit unions and also unconditionally guarantees all deposits with Alberta Treasury Branches.

Since security deposit trust accounts with banks, trust companies and loan companies are insured to a limit of $60,000, certain procedures must be followed to ensure funds are protected if the account balance exceeds $60,000:

1. Inform the bank, trust company or loan company that the trust account is a pooled trust account set up under the Residential Tenancies Act. Advise the institution that the account contains funds of more than one party and that these parties change periodically. Whenever a landlord opens a new trust account, they have to provide a similar notification to the bank or trust company.

2. Provide the bank, trust company or loan company with the following information:

   (a) The number of tenants whose money is in the trust account. Identify them by suite or stall numbers, or similar identification but not by name.
   (b) The amount that each tenant has on deposit with the landlord in the trust account.

This notification should be given to the landlord's bank, trust company or loan company on or about April 30th each and every year. This will establish beyond doubt that the trust account is in fact pooled. Because the premium payable to C.D.I.C. is calculated at April 30th each year, it is necessary to provide this information to the bank, trust company or loan company to coincide with that date. Provided that landlords follow this procedure on an annual basis, it is understood that each party who has funds on deposit in the trust account will be protected to the $60,000 limit presently provided under the C.D.I.C. Act.

It is important that landlords follow this process on an annual basis. If the appropriate disclosure has not taken place, e.g., been made by the depositor and recorded by the member financial institution, C.D.I.C. will treat the account as part of the depositor's individual holdings, which would be eligible for a cumulative maximum of $60,000 of insurance coverage. If a tenant suffers a loss of funds that are being held on deposit by a landlord in a pooled trust account, the tenant may be able to claim against the landlord for the loss.

FORMS

Accommodation Inspection Report and Statement of Account forms are available at a nominal cost from a number of organizations including the Landlord and Tenant Advisory Boards, the Calgary Apartment Association and the Edmonton Apartment Association.

The inspection report has to be in writing and contain everything that the RTA requires. The RTA lists the content for these reports in the Residential Tenancies Ministerial Regulation. Landlords and tenants are free to prepare inspection reports that best suit their particular needs as long as the form has the content from the Regulation. The inspection report cannot take away any of the rights, benefits or protections contained in the Act.

INSPECTION REPORTS ... NOVEMBER 1, 2004

STATUTORY REFERENCES

Residential Tenancies Act (RTA) *sections:*

1(1)(f) landlord definition
1(1)(j) prescribed definition
1(1)(l) residential premises definition
1(1)(m) residential tenancy agreement definition
1(1)(n) security deposit definition
1(1)(t) tenant definition
19 inspection report
46 return of security deposits

Residential Tenancies Ministerial Regulation section:

4 inspection reports

GUIDELINES

The RTA says that it is mandatory for landlords and tenants to complete both a move-in and move-out ***inspection report***. Some other documents, like a written ***residential tenancy agreement*** are recommended, but they are not mandatory. **Completing written inspection reports is mandatory**. The ***landlord*** must always give the ***tenant*** a copy of the inspection reports as soon as they are completed and must also keep a copy on file.

The landlord must keep inspection reports for at least 3 years after the ***tenancy*** ends. The landlord must allow the Director or another authorized person to look at these reports for the purpose of either an inspection or an investigation.

A landlord can make deductions from a tenant's ***security deposit*** to pay for ***damage*** to the ***residential premises*** only if the landlord and tenant completed move-in and move-out inspection reports. {*See* Security Deposit module} These inspection reports must be done within 1 week before or after the tenant moves in, and within 1 week before or after the tenant moves out[14].

[14] **Corlis v. St. Croix, 2002 ABPC 19.** Provincial Court Judge A.H. Lefever reviewed the legislation and previous decisions and concluded that while the landlord may not apply security deposit monies to repairs and cleaning when there have not been the required inspections, no general limitation is created to stop a landlord from starting an action for damages because of alleged breaches of a residential tenancy agreement.

The inspection report must include the following statements and the signatures that are required by the Residential Tenancies Ministerial Regulation.

1. The date the inspection was conducted, and the names of those present when it was conducted, and their signatures.

2. A statement to be signed by the tenant if they agree with the results of the inspection.

3. A statement to be signed by the tenant if they disagree with the results of the inspection.

4. A statement to be signed by the landlord indicating that the tenant refused to sign the tenant's statement, if a tenant refuses to sign the inspection report.

5. A statement to be signed by the landlord indicating that the inspection was done without the tenant, if a tenant was not present when the inspection was conducted.

6. The inspections should be conducted when the premises are vacant, unless the landlord and tenant both agree to do the inspections while the rental premises are occupied.

When the move-in inspection report is conducted at the beginning of the tenancy, both the landlord and tenant are aware of the condition of the residential premises at the beginning of the tenancy.[15] When compared with the move-out inspection conducted at the end of the tenancy, it provides ***evidence*** of any change that has happened to the condition of the residential premises during the tenancy.

A landlord can conduct the inspection without the tenant being present if the landlord has offered the tenant two inspection times and the tenant has refused or did not attend. The landlord must offer the tenant inspection times that are between 8 am and 8 pm, on two different days that are not holidays.[16] If a landlord does an inspection report when

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[15] **Rempel v. Fettig**, 2002 **ABPC 81.** A decision of Provincial Court Judge J.N. LeGrandeur. This case is instructive because even though there was a move-in inspection report and the tenants took the place in the condition it was in (which was not good), it was held that they were entitled to damages by way of ***abatement of rent*** when the premises was condemned under the *Public Health Act* some 6 months after they had moved in. The Judge conducted an extensive review of decisions concerning the "habitability" of rental premises and concluded that the onus is on the landlord to ensure habitability at the time the tenants move in, and to maintain habitability thereafter:

"[32] The subject premises in this case were not ***habitable*** *at the time the tenants took possession, nor did that change during the currency of their possession. These premises could not be dwelled in safely, in the sense of the health of the occupants, nor did the condition of the premises allow the occupants to live in reasonable comfort, having regard to the intended use of the premises. I am satisfied that the conditions noted by the health inspector which led to the Executive Officers Order (Exhibit #2) were in existence at the time the tenants took occupation. The fact that the tenants resided in the residence for some six months does not change that fact, nor may it be seen as some sort of a waiver by the Plaintiffs."*

[16] **Corlis v. St. Croix**, **2002 ABPC 19.** A decision of Provincial Court Judge A.H. LeFever. There are a number of issues dealt with in this case, but it is primarily a case concerned with whether the landlord validly conducted the

the tenant is not there, the tenant should carefully review everything in the report and add their own comments, if any, before signing it and giving a copy to the landlord.

The inspection report should list what's in the residential premises, for example, the condition of the walls, floors, ceilings, windows, cupboards, appliances and plumbing fixtures. Taking pictures or a video that is kept with the copy of the inspection report is also useful. The inspection report should say what needs to be fixed and cleaned, and who will be responsible for looking after that.

A tenant is responsible for ordinary cleaning and for cleaning the results of extraordinary or abnormal use.[17] {*See* the "sample cleaning list" in this module}. Some examples of damages to the physical condition of rental premises for which deductions can be made when inspection reports are properly completed, in most instances, are:

- steam cleaning of rugs with obvious dirt, soil, oil or urine stains or holes
- badly repaired holes in walls
- pushed in door panels
- food, dirt or nicotine on walls, cupboards or appliances
- broken glass
- holes in window screens
- garbage or litter strewn about
- pet excrements.

Thus, a landlord can deduct for such things as obvious dirt, soil, etc., as long as the inspection reports were completed. Removal of accumulation of foreign material does not constitute a deduction for ***normal wear and tear***. Some examples of normal wear and tear for which deductions are not allowable when inspection reports are properly completed are:

- professional shampooing of rugs, when there were no excess foreign materials
- professional cleaning of drapes, when there were no excess foreign materials.

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alleged move-out inspection in the tenant's absence. After examining the evidence, the judge came to the conclusion that a landlord has an obligation under the Act to endeavor to contact the tenant and arrange for the move-out inspection report. A landlord must show to the Court that at least some reasonable steps have been taken without success in that regard before the Court will allow deduction from the security deposit in accordance with *section 48(6)*. But even so, the judge concluded that the landlord's failure to properly conduct the inspection report did not stop the landlord from taking legal action.

[17] **Dubois v. McCallum, 2002 ABPC 4.** A decision of Provincial Court Judge A.H. LeFever. This case contains elements of just about everything that can go wrong in a relationship between a landlord and tenant. It is included here for reference because of the many complaints by both the landlord and the tenant against the other were alleged improprieties in relation to both the move-in and move-out inspections. Both parties were held responsible for repairs.

A ***landlord*** cannot make deductions from a security deposit to restore or ***repair*** normal wear and tear,[18] even if there is a clause saying the opposite in a residential tenancy agreement. The RTA protects the security deposit from deductions for normal wear and tear by requiring landlords to complete move-in and move-out inspection reports. These reports allow the landlord and tenant to determine whether there are needed repairs or extra cleaning. If the inspection reports are not completed, the landlord is not entitled to make deductions from the security deposit to cover cleaning or repair costs. However, the clause will allow the landlord to sue the tenant for the charges agreed to.

If there are ***rent*** arrears or other charges, like NSF fees, that do not relate to the condition of the residential premises, the security deposit can be used towards the arrears or other charges even if inspection reports have not been completed.

If a landlord believes the tenant has ***abandoned*** the residential premises, the landlord must still make a reasonable effort to contact the tenant and arrange the move-out inspection. A record should be kept of the attempted contacts.

A new landlord cannot deduct for damages from a security deposit if the previous landlord did not complete a move-in inspection report. A new landlord is responsible for getting copies of all tenancy documents from a previous landlord.

If a landlord does not do the required inspection reports, a landlord can apply to ***court*** for a judgment for the debt owed by the tenant.

The move-out inspection report must be done within one week before or after the tenant moves.

The landlord has to document the inspection and give a copy to the tenant as soon as it is completed. As noted previously, a landlord is required to keep a copy of the inspection reports for at least 3 years after the ***termination*** of the tenancy. A landlord must make the inspection reports available for inspection by the Director or an authorized person for the purposes of an inspection or investigation.

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[18] **MacNeill v. North American Leaseholds Ltd., AB 1980, 118 D.L.R. (3d) pp. 37-39.** Provincial Court Judge D. E. Patterson found that in this case, the condition of the carpets and drapes was clearly caused by normal use only. The landlord could not deduct for further professional cleaning. The tenant was not excused from usual and ordinary cleaning or cleaning up from abnormal use. The landlord appealed the decision and Court of Queen's Bench Justice J. Stevenson dismissed the appeal.

Sample cleaning list of things that should be done before a tenant vacates

If the landlord has not provided a cleaning list, the tenant should always check with the landlord to see if they have a cleaning list. The following is a suggested cleaning list for tenants to use if they are unsure of the cleaning that needs to be done when they are moving out of the residential premises.

- Clean in, out, behind and under the fridge and defrost and clean the freezer
- Leave the fridge door open if the power has been turned off
- Clean in, out, behind and under the stove and clean the oven and burners on the stove
- Wash the cupboards inside and outside
- Clean inside and outside (except multi-level buildings) of all windows/tracks, closet doors/tracks and patio doors/tracks
- Wash walls and floors
- Dust curtain rods and window coverings or replace yours with the landlords
- Dust or wash fans and vents, light fixtures, replace burnt out light bulbs
- Check the smoke detector, replace batteries as needed
- Clean bathroom thoroughly including the tub, tile, sink, vanity, mirror, medicine cabinet, cupboards and toilet
- Vacuum and clean the carpets, if necessary

FORMS

Inspection Report forms, for both the move-in and move-out inspections with duplicate copies for landlords and tenants, are available at nominal cost from the Landlord and Tenant Advisory Boards, the Calgary Apartment Association or the Edmonton Apartment Association.

The forms are useful because they contain all the statements required by the Regulation; they have both the move-in and move-out inspections contained in the one form for ease of comparison; and they are printed in duplicate so that there are copies for both the landlord and the tenant.

NORMAL WEAR & TEAR ... NOVEMBER 1, 2004

STATUTORY REFERENCES

Residential Tenancies Act (RTA) *sections:*

1(1)(f)	*landlord definition*
1(1)(l)	*residential premises definition*
1(1)(m)	*residential tenancy agreement definition*
1(1)(t)	*tenant definition*
16(c)	*landlord's covenants*
21	*tenant's covenants*
37	*tenant's remedies*
46(1)(b)	*normal wear and tear definition*
46(5)	*deductions from security deposit*

There are no sections in the Regulations relating directly to "normal wear and tear".

GUIDELINES

Normal wear and tear is defined in the RTA as deterioration that takes place over time from the use of the ***residential premises***, even when the ***tenant*** provides reasonable care and ***maintenance***.

The residential premises are the landlord's property and naturally, the ***landlord*** wants and expects them to be looked after and kept clean and in good ***repair***. However, over time, even with the best care and attention by the tenant, things wear out.

The tenant should maintain the residential premises in a condition that is, at the very least, no worse than it was when the tenant moved in, allowing for normal wear and tear.

The landlord can conduct periodic inspections to confirm that the tenant is not damaging the premises and is keeping them in a reasonably clean condition. {*See* Landlord's Right of Entry module}

The RTA and *Public Health Act* require landlords to ensure that the residential premises meet certain standards at all times. The Minimum Housing and Health Standards that the landlord must meet are contained in the *Housing Regulation [A/R 173/99]* and *Nuisance and General Sanitation Regulation [A/R 242/85]*, both under the *Public Health Act*.

In addition, the RTA states that it is a ***covenant*** of every ***residential tenancy agreement*** that the ***tenant*** will *". . . not do or permit significant damage to the premises, the common property . . . . [and] the tenant will maintain the premises and any property rented with it in a reasonably clean condition".*[19]

Typically the tenant is responsible for looking after the residential premises, but the tenant is not responsible for everything in the residential premises. The plumbing, heating/air conditioning, and electric services are some examples of systems within the premises that the landlord is responsible for maintaining as per the Minimum Housing and Health Standards. However, this does not take away the tenant's obligation not to damage those systems. It also does not relieve the tenant of liability for repair if they or a family member or guest, or even a pet, cause damage to the residential premises.[20]

The tenant also has the responsibility to inform the landlord if anything in the residential premises needs repair or replacement. It is a good idea for the tenant to put their request for repairs in writing and keep a copy. A landlord should respond to a request from a tenant for repairs within a reasonable period of time.

One way to reduce, if not eliminate, most of the potential areas of dispute is for both the landlord and tenant to be clear on responsibilities for maintenance of the residential premises from the start of the ***tenancy***. The residential tenancy agreement should say what the landlord is responsible for looking after and repairing and what the tenant is responsible for taking care of and repairing.

A landlord cannot make deductions from a ***security deposit*** for restoring or repairing costs resulting from normal wear and tear,[21] even if there is a clause saying the opposite in a residential tenancy agreement. The RTA protects the security deposit from deductions for normal wear and tear as the RTA requires landlords to complete move-in and move-out inspection reports so the landlord and tenant can determine whether there are needed repairs or extra cleaning. If the inspection reports are not completed, the landlord is not entitled to make deductions from security deposits to cover cleaning or repair costs. However, the clause will allow the landlord to sue the tenant for the charges agreed to.

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[19] **Seaton v. Bernard, 2001 ABPC 182.** Provincial Court Judge Jerry N. LeGrandeur confirmed tenants or their guests must not damage the premises or common areas wilfully or negligently.

[20] **Klys v. Foster, 2000 ABPC 23.** Provincial Court Judge Jerry N. LeGrandeur found the tenant responsible for damage caused by her dog and for cutting and removal of weeds. The tenant had a duty under the tenancy agreement to maintain the yard area.

[21] **MacNeill v. North American Leaseholds Ltd., AB 1980, 118 D.L.R. (3d) pp. 37-39.** Provincial Court Judge D. E. Patterson found that in this case, the condition of the carpets and drapes was clearly caused by normal use only. The landlord could not deduct for further professional cleaning. The tenant was not excused from usual and ordinary cleaning or cleaning up from abnormal use. The landlord appealed the decision and Court of Queen's Bench Justice J. Stevenson dismissed the appeal.

A tenant has the responsibility for ordinary cleaning and for cleaning the results of extraordinary or abnormal use.[22] Some examples of damages to the physical condition of rental premises for which deductions can be made (when inspection reports are properly completed) are:

- steam cleaning of rugs with obvious dirt, soil, oil or urine stains or holes
- badly repaired holes in walls
- pushed in door panels
- food, dirt or nicotine on walls, cupboards and appliances
- broken glass
- holes in window screens
- garbage or litter strewn about
- pet excrements.

Some examples of normal wear and tear for which deductions are not allowable are:

- professional shampooing of rugs, when there were no excess foreign materials
- professional cleaning of drapes, when there were no excess foreign materials.

The cleaning of carpeting or rugs is one of the main sources of conflict between landlords and tenants. If the tenant had a pet that was not caged, steam cleaning will almost certainly be required regardless of the length of the tenancy. But that doesn't mean that every time a tenancy ends professional carpet cleaning is required and the expense can be charged to the tenant. If the landlord wants to do that, the carpet will have to have been in such a condition that professional cleaning is required.

The landlord cannot charge a tenant for the total replacement of a worn out carpet or rug simply because that particular tenant happened to be leaving at a time when the replacement is required.

Spilled liquids, cigarette burns, oil stains or mud tracked onto carpets may be occurrences of everyday living, but they are not normal wear and tear. The overall deterioration to the carpet from repeated cleanings is normal wear and tear.[23]

Hanging pictures on walls is an issue between landlords and tenants. Consideration must be given to both the number of pictures that are hung on the walls, and the manner in which they are hung. A tenant should check with the landlord regarding what is acceptable.

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[22] **Dubois v. McCallum, 2002 ABPC 4.** A decision of Provincial Court Judge A.H. LeFever. This case contains elements of just about everything that can go wrong in a relationship between a landlord and tenant. It is included here for reference because of the many complaints by both the landlord and the tenant against the other were alleged improprieties in relation to both the move-in and move-out inspections. Both parties were held responsible for repairs.

[23] **MacNeill v. North American Leaseholds Ltd., AB 1980, 118 D.L.R. (3d) pp. 37-39.** Provincial Court Judge D. E. Patterson found that in this case, the condition of the carpets and drapes was clearly caused by normal use only. The landlord could not deduct for further professional cleaning. The tenant was not excused from usual and ordinary cleaning or cleaning up from abnormal use. The landlord appealed the decision and Court of Queen's Bench Justice J. Stevenson dismissed the appeal.

A tenant who rents a single-family home, townhouse or duplex, and has the exclusive use of the yard or part of the yard, is generally responsible for routine yard maintenance and snow removal. The parties may agree to arrangements for ongoing maintenance in the residential tenancy agreement.

A landlord has to maintain the residential premises in good repair in compliance with all building, health, fire and safety standards and is required to perform any other obligations outlined in the residential tenancy agreement.

If a landlord does not fulfill the landlord's obligations, the RTA says the tenant may apply to ***court*** for one or more of the following remedies:

a) recovery for damages because of the breach or contravention by the landlord,
b) reduction in rent (***abatement of rent***) if the tenant has lost a benefit of the tenancy,
c) compensation for the cost of performing the landlord's obligations, or
d) ***termination*** of the tenancy by reason of the breach or contravention if, in the opinion of the court, the breach or contravention should cause the tenancy to be terminated.

A tenant who shows the landlord that they are responsible and will look after the residential premises will have fewer problems during the tenancy.

A landlord who shows the tenant that they care about the upkeep of the residential premises is more likely to see the same behaviour from a tenant than a landlord who neglects the residential premises and doesn't look after maintenance, repairs or replacement.

ADDITIONAL FEES & CHARGES ... NOVEMBER 1, 2004

STATUTORY REFERENCES

Residential Tenancies Act (RTA) *sections:*

1(1)(f) landlord definition
1(1)(k) rent definition
1(1)(l) residential premises definition
1(1)(m) residential tenancy agreement definition
1(1)(n), 43(1), 43(2) security deposit
1(1)(t) tenant definition
22(6) assignment or sublease

There are no sections in the *Regulations* relating directly to "additional fees or charges".

GUIDELINES

The RTA allows a ***landlord*** to collect a ***security deposit*** providing that it does not exceed the sum of the first month's ***rent***.

A security deposit is intended:

- To cover the landlord's costs of ***repair***ing or replacing physical ***damage*** to premises.
- To cover the costs of cleaning because of extraordinary or abnormal use. This does not include cleaning associated with ***normal wear and tear***.
- To cover any arrears of rental payments.
- To cover other costs agreed to by the ***tenant*** that are set out in the ***residential tenancy agreement***, such as legal fees, utilities, late fees, etc.

The RTA does not prohibit the landlord and tenant from agreeing to fees and charges that are in addition to the security deposit and rent. However, a landlord cannot charge an additional "deposit" for a certain privilege, if the total amount exceeds the sum of the first month's rent.

Any refundable fee or charge becomes part of the security deposit.

A non-refundable fee or charge that is agreed to in the residential tenancy agreement is not subject to the security deposit restrictions. Non-refundable fees cannot be deposited into the security deposit ***trust account***.

A landlord should give a tenant a receipt for any payments that are received from the tenant.

A residential tenancy agreement is a contract between the landlord and tenant. {*See* Residential Tenancy Agreement module} Like all contracts, the residential tenancy agreement can specify the terms of any additional fees or charges and the circumstances that would give rise to them.

The tenant has the option of refusing to enter into a residential tenancy agreement that contains additional fees or charges. The tenant may negotiate changes to their specific tenancy agreement or may choose to rent elsewhere.

The law relating to contracts is clear that once both parties enter into an ***agreement***, it cannot be amended without the agreement of both parties. So, if the tenancy agreement is written, and any additional fees or charges are clearly specified and agreed to by the tenant and are not contrary to the RTA, then the tenant is obligated to pay those fees or charges when the circumstances giving rise to them occur. If the tenancy agreement is not written, it becomes a matter for the ***court***s to determine, based on the ***evidence*** presented to them, whether there was agreement on the additional fees or charges payable by the tenant.

Any fee or charge that a landlord imposes may be subject to review by the court. The court has the power under the *Judicature Act* to grant *equitable relief* or *relief from forfeiture* to the tenant if it concludes that the fee or additional charge is unreasonable under the circumstances.[24]

PRACTICAL APPLICATIONS

Fees or additional charges should reasonably reflect the actual costs that the landlord is seeking to cover. If the fee or charge does not reflect an actual cost recovery, or is far in excess of the cost recovery, it may well be held by a court to be unenforceable, and could even, in some circumstances, be an offence under the *Criminal Code of Canada*.

Tenancy agreements should state any additional fees or charges, the circumstances that will give rise to them, and whether they are refundable or non-refundable. All fees should be disclosed to tenants when an application and security deposit are taken.

- **Application Fee**

  A landlord may charge an "application fee" and should let the tenant know about it before taking the application. It is the landlord's choice whether or not to refund the

[24] **Dorland Property Management v. Hood, 2000 ABPC 165.** Judge D.G. Ingram in Provincial Court ruled that the discounted rent of $90 was strictly contractual. The penalty clause in this case was unconscionable and oppressive because the landlord terminated the lease and the claim for discounted rent was dismissed.

fee if the application is denied or approved. The prospective tenant who does not want to pay such a fee does not have to apply to rent the ***residential premises***.

- **Key Fee**

  A landlord may charge a key fee or deposit if both parties agree to the fee.

- **Pet Fee**

  A landlord may charge a pet fee or deposit if both parties agree to the fee. However if a tenant acquires a pet after the tenancy has begun, the landlord cannot demand that the tenant pay an additional fee or charge unless the residential tenancy agreement speaks to the issue or both parties agree[25].

- **Changing who Pays the Utility Bills**

  If the cost of utilities is included in the tenancy agreement, the landlord cannot impose an additional charge by changing who pays for the utilities without the ***consent*** of the tenant.

- **Late Payment of Rent or NSF Fees**

  A landlord may charge a fee for late payment of rent or an NSF fee only if the fee is clearly stated in the tenancy agreement. If the tenancy agreement allows for either of these fees to be charged, the fees must be reasonable, as landlords cannot impose penalties[26].

- **Re-Rental Fee**

  A landlord may charge a re-rental fee if it has been agreed to by the tenant in the residential tenancy agreement. If the agreement specifies a re-rental fee and the tenant wishes to terminate their tenancy prior to the ***termination*** date and, if the landlord is willing to allow the tenant to terminate at that earlier date, the tenant will

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[25] **Lyman v. 637568 Alberta Ltd., 1999 ABPC 74.** A decision of Provincial Court Assistant Chief Judge Donald E. Patterson. This case from Grande Prairie, primarily concerned with issues surrounding return of a security deposit when there has been extensive damage, illustrates what can happen in this circumstance. At the time of entering into the tenancy agreement, even though the landlord had a "no pets" policy, the tenant persuaded the landlord to allow her to keep her pet gecko - but she didn't tell the landlord that her pet gecko required live crickets as food. Some of the crickets escaped, and the building became infested with crickets, requiring fumigation. The landlord was entitled to deductions from the security deposit in accordance with the conditions agreed to by the tenant.

[26] **Cracknell v. Jeffrey, 2001 ABPC 11.** A decision of Provincial Court Judge J.N. LeGrandeur. In this case, the landlord claimed a "late payment fee" of $5.00 per day for 30 days, on unpaid rent ($150.00). The Judge carefully examined the law relating to "legitimate pre-estimate of liquidated damages" and "penalties", and came to the conclusion that, in this instance, the so-called "late payment fee" was in law a "penalty", and as such would not be allowed by the Court. In summary, the Judge said, *[15] whether the sum claimed is a penalty or a genuine pre-estimate of damage is a question of law to be decided upon consideration of the whole agreement. (Reimer v. Rosen, [1919] 1 WWR 429, Man.C.A.) Although the parties to a* ***contract*** *may always try to make a pre-determination as to damages, should the contract be breached, this must always yield to judicial approval of its reasonableness in the circumstances. (See: H.F.Clarke Ltd. v. Thermidaire Corporation Ltd., (1975) 54 DLR (3d) 385 per Laskin, CJC at 393) That approach is consistent with the principle that an injured party is entitled to be compensated and made whole, but not bettered by a damage award. (See: Neunier v. Cloutier, (1984) 9 DLR (4th) 986).*

be required to pay the landlord the re-rental fee agreed to in the residential tenancy agreement.

- **Fee for Consenting to an Assignment or Sublease**

  The RTA prohibits a landlord from *charging a fee for giving consent to an* ***assignment*** or sublease of a residential tenancy agreement.

LANDLORD'S RIGHT OF ENTRY ... NOVEMBER 1, 2004

STATUTORY REFERENCES

Residential Tenancies Act (RTA) *sections:*

1(1)(f)	*landlord definition*
1(1)(l)	*residential premises definition*
1(1)(t)	*tenant definition*
1(2)	*reference to tenant*
16	*landlord's covenants*
23	*entry of premises*
24	*locks and security devices*
37	*tenant's remedies*

There are no sections in the Regulations relating directly to the landlord's right of entry.

GUIDELINES

A ***tenant*** is entitled to the possession and ***peaceful enjoyment*** of the ***residential premises*** they are renting. The tenant has to abide by the ***residential tenancy agreement*** and the obligations in the RTA.[27]

The residential premises is the landlord's property and it is also the tenant's home.

The tenant should not be disturbed or inconvenienced by the ***landlord*** or anyone working for the landlord without a valid reason unless the tenant gives ***consent*** or gets the required ***notice*** at least 24 hours before the time of entry.[28]

Entry with Consent

Consent is a voluntary ***agreement*** by a person to do something proposed by another. Consent under the influence of fear or terror does not amount to real consent.

A landlord may enter the residential premises with the tenant's consent. If the landlord obtains the consent of the tenant, a notice is not required. The time for entry would be

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[27] **R. v. Cecil James Speirs, 1993.** A decision of Provincial Court Judge Nemirsky. The forcible entry by a landlord caused a breach of the peace, or at least a reasonable apprehension of a breach of the peace, and will not be tolerated. Mr. Speirs was found guilty as charged under section 72(1) of the Criminal Code.

[28] **R. v. Erin Blacklaws, 1996 Alta Prov Ct. #960188745P101001 - 002, 960913605P101001.** A decision of Provincial Court Judge Maher. The landlord without justification or excuse entered the tenant's residential premises unannounced to look for something belonging to the landlord that might have been stolen by the tenant. The entry of the premises by the landlord was a breach of the RTA.

arranged at a time convenient to both the landlord and the tenant. Landlords can phone or meet with tenants to obtain consent to enter the residential premises. Consent can be verbal or in writing.

If the tenant has made the landlord aware of needed ***repairs***, the landlord may want to obtain the tenant's consent at that time to enter the residential premises to complete the repairs. Otherwise, the landlord will be required to give proper ***notice of entry***.

Entry with Notice

A landlord may enter the tenant's residential premises without consent, but only after giving the tenant a written notice at least 24 hours before the time of entry, to:

- inspect the state of ***repair*** of the residential premises;
- make repairs to the premises;
- ***control*** pests as required;
- show the premises to prospective purchasers or mortgagees;
- show the premises to prospective tenants after the landlord or tenant has given notice to end a ***periodic tenancy*** or in the final month of a ***fixed term tenancy***.

If a landlord needs to enter all or several residential premises in a complex, the landlord must give each tenant notice of the entry. For example: A landlord needs to enter all ***units*** to check the furnaces. A landlord cannot just post a ***notice of entry*** in the ***common areas*** of the building.

A tenant does not have to be present when a landlord enters the residential premises. The landlord has the right to enter as long as the landlord gives proper notice.

Form of Notice

A notice to enter the residential premises must:

- be ***served*** on the tenant at least 24 hours before the time of entry,
- be in writing,
- be signed by the landlord or the ***agent***,
- state the reason that the landlord is entering the residential premises, and
- state the date and time of entry that complies with the restrictions on holidays and hours of entry.

The RTA allows a notice of entry to be served on a tenant in the following ways:

- Personally.
- By registered mail.
- By certified mail.
- On any adult who apparently resides with the tenant.
- By posting it in a conspicuous place on some part of the residential premises.
- Electronically.

Sliding a notice under the door of residential premises is not consistent with any of the previous six acceptable methods of serving notices.

Time of Entry

The notice has to state the time, or a period of time, that is reasonable when the landlord is going to enter between 8 am and 8 pm.

The landlord cannot enter on a holiday or a Sunday. If the tenant has a different day of religious worship, the tenant must give the landlord written notice of that day. A landlord can then enter on a Sunday, but not the day that is the tenant's day of religious worship.

Entry without Notice

The landlord may enter the residential premises without permission and without giving the tenant any notice in two instances:

- if the landlord has reason to believe there is an emergency;
- if the tenant has ***abandoned*** the residential premises.

Entry for Emergencies

An emergency could be defined as an unforeseen combination of circumstances that calls for immediate action. Such things as smoke, unusual odors, flames, water ***damage***, broken windows, heat or power failure, smoke detector alarm sounding and threat to life or property are considered emergencies.

A landlord may enter the residential premises without consent or notice when an emergency exists. If an emergency happens when a tenant is not home, landlords should phone the tenant, ring the doorbell and knock on the entrance to the premises before using pass keys. Contact attempts should be documented.

If the tenant changed the lock and did not give the landlord a key, emergency personnel can remove the lock or the door. The tenant has committed a ***breach*** of the RTA by not providing the landlord with a new key. {*See* Security: Keys and Locks module}

PRACTICAL APPLICATIONS

Abandonment

There are times when the tenant may be away for an extended period of time, but has not actually abandoned the residential premises.

A tenant may vacate the residential premises without giving notice to the landlord and while the ***tenancy*** is still in effect.

If there has been no communication from the tenant, the landlord must determine if the tenant has abandoned the residential premises.

Examples of the kinds of things that might cause the landlord to believe the residential premises appear to be abandoned by the tenant:

- ***rent*** has not been paid;
- mail addressed to the tenant is still coming to the residential premises without being picked up, or alternatively is no longer coming;
- the utilities (if in the tenant's name) have been disconnected;
- newspapers have accumulated.

A landlord could talk to neighbours, friends, relatives, tenant's employer or references given by the tenant to see whether they can provide information.[29]

If a tenant abandons the residential premises before the end of the tenancy, the landlord is still entitled to the rent that is owed for the remainder of the tenancy agreed to in the residential tenancy agreement.

The landlord must take reasonable steps to re-rent the unit. If the landlord rents the premises to a new tenant, the old tenant is no longer responsible to pay the rent from the date of the new tenancy.

Frequency of Entry to Inspect

The RTA requires ***inspection reports*** to be completed at the beginning and the end of the tenancy. However, good business practices suggest that an inspection should be conducted at least once a year in a long-term tenancy. Proper notice of entry has to be provided by the landlord.

Objecting to Notice to Enter

The tenant has the right (under common law) to object to the day or time the landlord wants to enter if it is inconvenient. However, the tenant must give the landlord another reasonable, alternate day or time to enter the premises. A tenant should have a valid reason for changing the time of entry. The fact that a tenant cannot be at home is not a valid reason for changing the time.

The common law principle requires a tenant who feels wrongly dealt with to bring their objection to the attention of the landlord as soon as possible.

The tenant's recourse is through a civil action where the judge would listen to both parties to the dispute and make a ruling.

FORMS

Notice of entry forms are available at a nominal cost from a number of organizations including the Landlord and Tenant Advisory Boards, the Calgary Apartment Association and the Edmonton Apartment Association.

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[29] **Corlis v. St. Croix, 2002 ABPC 19.** A decision of Provincial Court Judge A. H. LeFever. This case was primarily concerned with whether a purported "inspection" by the landlord in the absence of the tenant, on the grounds advanced by the landlord that the tenant had abandoned the place. The Judge ruled that the landlord did not make reasonable efforts to contact the tenant to arrange the inspection.

Since the *Residential Tenancies Act* does not prescribe a particular form of notice of entry, landlords and tenants are free to prepare whatever form best suits their particular needs. However, the ***agreement*** cannot take away any of the rights, benefits or protections contained in the Act.

ENDING THE TENANCY ... NOVEMBER 1, 2004

STATUTORY REFERENCES

Residential Tenancies Act (RTA) *sections:*

1(1)(e)	*fixed term tenancy definition*
1(1)(f)	*landlord definition*
1(1)(h)	*overholding tenant definition*
1(1)(i)	*periodic tenancy definition*
1(1)(j)	*prescribed definition*
1(1)(k)	*rent definition*
1(1)(l)	*residential premises definition*
1(1)(m)	*residential tenancy agreement definition*
1(1)(p)	*substantial breach definition*
1(1)(q)	*tenancy month definition*
1(1)(r)	*tenancy week definition*
1(1)(s)	*tenancy year definition*
1(1)(t)	*tenant definition*
1(2)	*reference to tenant*
5	*notice of termination of periodic tenancy*
6	*termination by landlord*
7	*notice to terminate weekly tenancy*
8	*notice to terminate monthly tenancy*
9	*notice to terminate yearly tenancy*
10	*form of notice*
11	*notice to terminate tenancy of employee*
12	*notice to terminate for condominium conversion*
13	*implied periodic tenancy*
15	*notice to terminate not required (to end fixed term tenancies)*
16	*landlord's covenants (obligations)*
20	*time of expiration or termination*
21	*tenant's covenants (obligations)*
22	*assignment and sublease*
26	*landlord's remedies*
27	*repudiation of tenancy*
29	*termination for substantial breach by tenant*
30	*termination of tenancy for damage or assault*
32	*recovery of damages*
33	*notice to vacate (48 hour notice to non-tenant)*
34	*order for recovery of possession*
35	*writ of possession*
36	*notice to vacate (14-day notice to non-tenant)*
37	*tenant's remedies*

38	*possession unobtainable*
39	*compensation to tenant*
40	*frustration of tenancy agreement*
41	*application for remedy to court*
42	*order of court*
57	*service of notices, etc.*
58	*satisfaction of service requirement*

Ministerial Regulations sections:

Form 1	*Landlord's notice to tenant to terminate periodic tenancy*
Form 2	*Tenant's notice to landlord to terminate periodic tenancy*
Form 3	*Landlord's notice to tenant to terminate for substantial breach*
Form 4	*Landlord's notice to tenant 24-hour notice to terminate tenancy*
Form 5	*Landlord's notice to vacate to persons who are not tenants*
Form 6	*Tenant's notice to landlord to terminate for substantial breach*

GUIDELINES

Tenants and ***landlords*** may terminate a ***residential tenancy agreement*** for a variety of reasons. It may be because there has been a ***breach*** of the tenancy agreement, because the tenant has found another place to live or the landlord wants to end the ***tenancy*** for a ***prescribed*** reason. Regardless of the reason, proper ***notice*** to terminate is required to ***evict*** a tenant.

A landlord cannot terminate a residential tenancy agreement because the tenant made an application or filed a statement under the RTA, made a complaint, assisted in an investigation or inquiry, or gave ***evidence*** at a hearing under the RTA or the *Public Health Act*. A written complaint has to be made to Alberta Government Services before the department can take action against a landlord. {*See* "How to File a Consumer Complaint"}

If an order to vacate is issued under health and safety laws in Alberta, a tenancy may be terminated. These orders take precedence over the RTA, as in the case of Coon v. Beck[30].

[30] **Coon v. Beck, 1999 ABQB 140.** A decision of Master Funduk in the Court of Queen's Bench of Alberta. The landlord had failed to comply with an order under the Safety Codes Act, the building code and the building permit bylaw. The suites were illegal suites in what was supposed to be a duplex dwelling. The landlord gave notices of termination that the property had been sold. The tenants suggested that the landlord had not really sold the property and that the sale was fictitious. The tenants each had a room and they apparently shared the kitchen and bathroom. The Master determined that the RTA does not override illegal suites and the tenants had to vacate.

PRACTICAL APPLICATIONS

The RTA balances the rights of landlords to remove tenants or non-tenants who have committed a ***substantial breach*** with the rights of tenants to remain in the premises where they live.[31]

Tenants must be served a written notice that states the reason for the ***termination*** and the date that the tenancy is to end. Tenants have the opportunity to object to the reason given for the termination for a substantial breach. If the tenant objects to the reason, the landlord has to go to ***court*** for an order terminating the tenancy and to get possession of the premises. Both parties can present their side of things to the court.[32]

It is important to remember that regardless of who has committed a substantial breach, a landlord and tenant can agree between them to end the tenancy by a certain date and save the expense of taking the matter to court.

Not surprisingly, the largest number of terminations of tenancies by landlords arise from the tenant's failure to pay the ***rent***, in full, when it is due.[33] [34] This sometimes happens when tenants mistakenly think they can withhold the rent to force the landlord to do something like make some ***repairs***.[35] [36]

The law is very clear that the landlord is entitled to have the rent paid in full, when it is due. If a tenant runs into a problem paying the rent and lets the landlord know

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[31] **Christian Senior Citizens Homes of Northern Alberta v. Zilinski, 1998 ABQB 852.** Master Walter Breitkreuz in Chambers of the Court of Queen's Bench of Alberta determined that certain complaints about the tenants were insufficient to warrant termination for substantial breach.

[32] **Guterman v. Rasmussen, 2002 ABPC 71.** Provincial Court Judge D.G. Ingram considered the evidence from the landlord and the tenant, and their witnesses, concerning damage to the property. The tenant's notice of objection rendered the landlord's notice to terminate ineffective. The landlord took possession of the premises by changing all the locks. The Judge concluded that the tenant has abandoned the premises and the landlord's action was legitimate in seeking recovery of damages.

[33] **Klass Construction Ltd. v. Brown, 2000 ABQB 488.** Court of Queen's Bench Master Funduk granted an order of possession, as it was clear the tenant did not pay all the month's rent.

[34] **Midwest Property Management v. Moore, 2003 ABQB 581.** The tenant failed to comply with the ***eviction*** notice. The Court granted the landlord's application for termination of the tenancy. Court of Queen's Bench Madam Justice C.I. Johnstone denied the tenant's claim for damages, abuse of process, defamation, punitive damages and personal injury.

[35] **K. Hansen Masonry Ltd. v. Trautman, 2002 ABQB 166.** A landlord started the usual lawsuit as the tenant failed to pay rent when due. The building and suite were not unfit for human occupancy and the tenant could not withhold rent because of problems with the building or suite. Court of Queen's Bench Master Funduk had ordered the tenant to pay the outstanding rent into Court and the tenant was ordered to vacate the premises.

[36] **Sabetai Grunberg Profession Corporation v. Richard, 1998 ABPC 85.** Judge B.E. Scott in the Civil Division of Provincial Court found that the alleged failure of the landlord to repair was exaggerated. The Judge allowed recovery of arrears and certain repairs, after credit of ***security deposit***.

beforehand what the problem is, a landlord may let the tenant stay and pay the rent later or over time. But, the landlord is under no obligation to do this.

Even if a landlord is sympathetic and allows a tenant additional time to come up with the rent, the landlord may charge a late payment fee (if such a fee has been agreed to in the residential tenancy agreement). If late payment of rent happens frequently[37], the landlord can go directly to court to seek termination of the tenancy or can ***serve*** the tenant with a 14-day notice to terminate the tenancy on the basis that the tenant has committed a series of breaches, the cumulative effect of which amounts to a substantial breach.

A landlord is not allowed to change the locks to force a tenant out of the ***residential premises*** or to otherwise deny access to the tenant while the tenant still lives in the residential premises.[38]

A landlord is not allowed to discriminate against a tenant on the basis of the tenant's income to get rid of the tenant.[39]

Moving Out

When a tenant wants to end a ***periodic tenancy***, the tenant must give the landlord a notice saying they plan to move out.

The tenant's notice to the landlord must:

1. be in writing,
2. give the address of the residential premises,
3. be signed by the tenant, and
4. set out the termination date.

A tenant has to move out by 12 noon on the last day of the tenancy. The landlord and tenant can make an ***agreement*** to a different time. This does not apply if a landlord has given a tenant a 24-hour notice to terminate the tenancy for ***damage*** or assault. If the notice to terminate is for damage or assault, the tenant has to move out at the time stated in the notice.

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[37] A good "rule of thumb" is 3 separate instances of failure to pay the rent, in full, when due.

[38] **Burton v. Wright, 2000 ABPC 8.** Provincial Court Judge D.J. Plosz had to consider a dispute between a landlord and tenant that included amongst the various claims and counterclaims of the one against the other whether the landlord's actions, in moving the tenant's belongings out of the rented house and padlocking the doors, was justified given that every time the tenant had provided a rent cheque in the 4 months previous it had been returned NSF. The Judge commented that while the landlord's actions were, in some measure, understandable, they were clearly unlawful. The tenant was entitled to judgment against the landlord for damages suffered as a result of the unlawful acts.

[39] **409205 Alberta Ltd. v. Alberta (Human Rights & Citizenship Commission) 2002 ABQB 681.** Madam Justice L. J. Smith of the Court of Queen's Bench of Alberta dealt with a review on appeal of a decision made against a landlord by the Alberta Human Rights & Citizenship Commission. The Commission determined that the landlord had "raised the rent" of the tenant for no other reason than to "get rid of them". The landlord was found to have discriminated against the tenant on the basis of the tenant's income, and the Justice did not disturb the decision by the Alberta Human Rights & Citizenship Commission.

How much notice is required to terminate a tenancy?

- **Section 6 - Termination of Periodic Tenancy by Landlord for Prescribed Reasons**

A landlord can only end a periodic tenancy when the tenant has not committed a substantial breach for the following reasons[40]:

1. The landlord or a relative of the landlord intends to live in the residential premises.[41]
2. The landlord has sold the residential premises and the purchaser or a relative of the purchaser wants to move in.
3. The landlord has sold a detached or semi-detached dwelling ***unit*** or condominium unit, and the purchaser has requested in writing that the tenancy be terminated.
4. The landlord intends to demolish the building.
5. The landlord intends to make major renovations to the residential premises that require that the premises be empty. Major renovations do not include painting, fixing the floor or other routine ***maintenance***.
6. The landlord intends to use the residential premises for a non-residential use, such as business purposes.
7. The landlord is an educational institution and the tenant is no longer a student or will no longer be a student at the termination date specified in the ***notice of termination***.

The landlord's notice to the tenant must:

1. be in writing,
2. give the address of the residential premises,
3. be signed by the landlord,
4. state the reasons for the termination, and
5. set out the termination date.

If the tenant moves out of the residential premises as required by the notice given for one of the ***prescribed*** reasons listed in items 1 to 7 above, and the landlord does not use the premises for that reason, the landlord has committed an offence under the RTA. A written complaint has to be made to Alberta Government Services before they can take action against the landlord. {*See* "How to File a Consumer Complaint"}

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[40] **Demeter v. Demeter, 1999 ABQB 1061.** Court of Queen's Bench Master Breitkreuz ruled that the reason in the notice to terminate this periodic tenancy was not one of the reasons in the regulations. The landlord will have to provide a new notice after he is able to satisfy one of the reasons set out in the regulations. The case was dismissed.

[41] **Trump Developments Ltd. v. Pipke, 2000 ABQB 197.** Court of Queen's Bench Master Alberstat ruled that a corporate landlord cannot terminate the periodic tenancy for occupation of the premises by a corporate shareholder or a family member of a corporate shareholder. A corporate landlord is not a landlord for the purposes of obtaining possession. The case was dismissed.

If a tenant wants to move out of the residential premises before the termination date set out in the 3-month's notice from the landlord, proper written ***notice to vacate*** must be given by the tenant to end the tenancy.

- **Section 7 - Termination of Weekly Periodic Tenancy**

The landlord and tenant must give each other one week's written notice. Notice is to be given on or before the first day of the ***tenancy week***, with the termination to be effective on the last day of the tenancy week.

- **Section 8 - Termination of Monthly Periodic Tenancy**

A landlord must give the tenant three months' written notice. Notice is to be given on or before the first day of the three-month notice period.

An example: Joe has a ***month-to-month tenancy***. It begins on the first day of the month and ends on the last day of the month. If Joe's landlord wants Joe to move out by September 30, the landlord would have to give Joe notice on or before July 1.

A tenant must give the landlord one ***tenancy month***'s written notice. Notice is to be given on or before the first day of the one-month notice period.

An example: Joe has a month-to-month tenancy. It begins on the first day of the month and ends on the last day of the month. Joe decides to move out by September 30. He must give the landlord notice on or before September 1.

- **Section 9 - Termination of Yearly Periodic Tenancy**

A landlord must give the tenant 90 days written notice to be effective on the last day of the ***tenancy year***.

A tenant must give the landlord 60 days written notice to be effective on the last day of the tenancy year.

- **Section 11 - Termination of employee tenants**

A landlord or tenant may end a periodic tenancy with notice if the employment of the tenant is terminated. The notice must:

1. be in writing,
2. give the address of the residential premises,
3. be signed by the party giving the notice,
4. state the reasons for the termination of the tenancy, and
5. set out the date that the tenancy will terminate.

How much notice has to be given to terminate the tenancy of an employee tenant?

The amount of notice a landlord or tenant must give to terminate the tenancy has to be the longest of:

(a) the amount of notice that is required by law to terminate the tenant's employment,
(b) the amount of notice to terminate the employment that has been agreed to by the landlord and the tenant, or
(c) 1 week.

If the landlord is terminating the tenancy because of significant damage, assault, or threats of assault, the landlord can apply to the ***court*** for an order terminating the tenancy or the landlord can serve the tenant with a notice to terminate at least 24 hours before the termination date and time.

- **Section 12 - Termination for condominium conversions**

A landlord may end a periodic tenancy with notice if the landlord is converting the residential premises into a condominium.

How much notice to terminate does a landlord have to give a tenant for condominium conversions?

A landlord has to give at least 180 days written notice to the tenant before the day the tenancy is to end. The landlord's notice to the tenant must:

1. be in writing,
2. give the address of the residential premises,
3. be signed by the landlord,
4. state the reason for the termination, and
5. set out the termination date.

- **Section 15 - Termination of fixed term tenancies**

A ***fixed term tenancy*** ends on the day specified in the residential tenancy agreement, unless both parties agree to an early termination. For example, if the fixed term is from January 1 to December 31, the tenancy automatically ends on December 31. Unless the tenant and landlord make other arrangements, the tenant has to move out by noon on December 31.

The RTA does not require any notice to be given by a landlord or tenant to end a fixed term tenancy. It is courteous if the tenant or the landlord provide a notice prior to the end of the agreement that the tenancy will end.

A landlord is not obligated to accept a tenant's notice to terminate a fixed term tenancy before the end of the fixed term, but may agree to an early termination, or an ***assignment*** or sublease.

If a tenant ends a fixed term tenancy before the termination date, the landlord is entitled to be paid rent until the residential tenancy agreement ends. The landlord must take reasonable steps to re-rent the unit. If the landlord rents the premises to a new tenant, the old tenant is no longer responsible to pay the rent from the date of the new tenancy.

At the end of the fixed term the landlord and tenant may both want to continue the tenancy. At this time they can negotiate a new residential tenancy agreement that could include a change in the rent amount and the conditions of the tenancy. This agreement can be a new fixed term or be changed to a periodic tenancy.

If the parties do not notify each other of their intention to continue the tenancy or to end the tenancy, difficulties may arise. For example, the landlord may be expecting the tenant to leave at the end of the fixed term and may have plans for the premises.

The RTA says that if, at the end of the fixed term tenancy, the tenant doesn't move out and the landlord accepts the tenant staying on and continuing to pay rent, then, unless there are agreements or facts in the arrangement that indicate something else, the tenancy switches to a periodic tenancy.

If the fixed term tenancy was for a month or more, then the periodic tenancy becomes a monthly periodic tenancy.

If the fixed term tenancy was for a fixed term of less than one month, then the periodic tenancy becomes a weekly periodic tenancy.

Some fixed term tenancy agreements include a provision for renewal of the tenancy for an additional fixed term at the end. Such provisions usually include a requirement for the tenant and landlord to provide a period of written notice to each other about whether they wish to renew for a further fixed term.

- **Section 29 - Termination of Tenancy for Substantial Breach by Tenant**

Whether the tenancy is fixed term or periodic, the RTA says that in every residential tenancy agreement, the tenant promises:

1. The rent will be paid in full when it is due.
2. Not to interfere with the landlord or the landlord's employees, or interfere with or disturb other tenants in the residential premises or in the ***common areas***.
3. Not to do illegal acts or carry on any illegal business or occupation in the residential premises or in the common areas.
4. Not to do anything, or fail to do anything, that could endanger anyone in the building or in the common areas.
5. Not to cause significant damage to the residential premises or the common property.
6. To maintain the residential premises and all property included in the residential tenancy agreement and keep it reasonably clean.
7. To vacate the residential premises when the tenancy is ended.

If a tenant does not live up to the responsibilities in the residential tenancy agreement or under the RTA, they have committed a "substantial breach" and the landlord has grounds to terminate the tenancy.[42]

How much notice to terminate does a landlord have to give a tenant who commits a substantial breach?

If a tenant commits a substantial breach, the landlord can apply to court for an order terminating the tenancy, or can serve the tenant with a notice to terminate at least 14 days before the termination date stated in the notice. The landlord's notice to the tenant must:

1. be in writing,
2. give the address of the residential premises,
3. be signed by the landlord or ***agent***,
4. separately set out the rent that is due and any more rent that may become due during the notice period,
5. state the reason for the termination, and
6. set out the termination date.

A 14-day notice has to give the tenant 14 clear days before the tenant has to leave the residential premises. The day the notice is served on the tenant and the day the tenant moves out do not count as part of the 14 days.

If the landlord's notice to terminate the tenancy is for non-payment of rent, the notice to terminate has to state that the tenancy will not be terminated if the tenant pays what's owing for rent on or before the termination date set out in the notice.

If the tenant pays the rent before the 14 days is up, the notice to terminate is no longer effective.

The landlord's notice to terminate is null and void if the tenant serves the landlord with a written notice setting out the reasons why the tenant objects to the termination notice. The tenant's notice of objection has to be served before the termination date set out in the notice to terminate.

A tenant's notice of objection must be served personally, by registered mail or by certified mail for it to be effective.

If a landlord gives notice and the tenant does not move out, the landlord has to apply for a court order to terminate the tenancy and get possession of the residential premises. If

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[42] **Jusza v. Dobosz, 2003 ABQB 583**. Court of Queen's Bench Justice Donald Lee ordered termination of the tenancy on or before July 15, 2003 to follow the strict terms of the tenancy agreement between the parties.

the tenant still does not move, the landlord may go back to court for a ***writ of possession***.[43]

A writ of possession is the court document that authorizes a ***civil enforcement bailiff*** to remove the tenant and their belongings from the residential premises. No one other than a civil enforcement bailiff is allowed to remove the tenant or their belongings. Neither a landlord, a landlord's agent or employee nor the police are allowed to remove a tenant or a tenant's belongings. {*See* Landlord's Distraint module}

- **Section 30 - Termination of Tenancy for Damage or Assault (24-hour notice)**

A tenant must not do, or permit significant damage to be done to the property, or physically assault, or threaten to physically assault, the landlord (or the landlord's employee or agent) or another tenant.

How much notice to terminate does a landlord have to give a tenant for damage or assault?

The landlord can apply to the court for an order terminating the tenancy or the landlord can serve the tenant with a notice to terminate at least 24 hours before the termination date stated in the notice. The landlord's notice to the tenant must:

1. be in writing,
2. give the address of the residential premises,
3. be signed by the landlord,
4. state the reason for the termination, and
5. set out the termination date and time.

If a landlord is apprehensive that even more damage, or further assaults, are likely to occur in the 24-hour notice period, the landlord can go to court seeking an order for the immediate possession of the residential premises and removal of the tenant. The landlord should have compelling evidence to present to the court. It would be wise for the landlord to hire a lawyer to present the case.

If a landlord serves a 24-hour notice, and the tenant does not vacate the residential premises within the notice period, the landlord must, within 10 days of the date of termination specified in the notice, apply to court for an order to end the tenancy and to get vacant possession of the residential premises. If the landlord does not make the court application within the 10 days following the date of termination, then the 24-hour notice is ineffective. The landlord is considered to have never given a notice to terminate.

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[43] **Braden Equities Inc. v. Norman, 2003 ABQB 208.** Court of Queen's Bench Master Funduk reviewed the landlord's earlier lawsuit against the tenant where a Master gave an order terminating the tenancy and requiring the tenant to deliver possession. A writ of possession had been issued on April 5, 2002. The Master declined to grant a second order for possession as the landlord should exercise the order and the writ it got. One writ of possession is enough. Piling writs on writs achieves nothing.

- **Section 33 - Notice to Vacate to Non-Tenant (48-hour notice)**

If the tenant has ***abandoned*** the residential premises (***repudiation*** of tenancy), a landlord can serve a notice to vacate to the person(s) not authorized to live there.

The landlord is still entitled to the rent that is owed for the remainder of the tenancy agreed to in the residential tenancy agreement, if

- the tenant abandons the residential premises before the end of the tenancy,
- the tenant does not give the proper notice to end a periodic tenancy,
- the tenant moves out before the end of the fixed term tenancy.

How much notice to vacate does a landlord have to give an unknown person if a tenant has abandoned the premises?

The landlord can serve the unknown person with a 48-hour notice to vacate. The landlord's notice to the unknown person must:

1. be in writing,
2. give the address of the residential premises,
3. be signed by the landlord,
4. state the reasons for the termination, and
5. set out the termination date and time.

If the unknown person does not vacate within the 48 hours, the landlord can apply to court for an order terminating the tenancy of the tenant who abandoned the residential premises and for recovery of possession from the unknown person who is living there. This does not prevent the landlord from applying to court to recover ***damages*** from the tenant.

- **Section 36 - Notice to Vacate to Non-Tenant (14-day notice)**

A landlord can serve a notice to vacate to an unauthorized person living in a residential premises occupied by a tenant.

How much notice to vacate does a landlord have to give an unauthorized person if the residential premises are occupied by a tenant?

The landlord can serve the non-tenant with a 14-day notice to vacate. The landlord's notice to the non-tenant must:

1. be in writing,
2. give the address of the residential premises,
3. be signed by the landlord,
4. state the reasons for the termination, and
5. set out the termination date and time.

If the non-tenant does not vacate within the 14 days, the landlord can apply to court for an order for the non-tenant to vacate the residential premises.

A 14-day notice has to give the non-tenant 14 clear days before the non-tenant leaves the residential premises. The day the notice is served on the non-tenant and the day the non-tenant moves out do not count as part of the 14 days.

- **Section 38 - Possession Unobtainable**

If a tenant has been unable to move in because the residential premises is not available from the landlord or because the premises do not meet the minimum standards under the *Public Health Act* and regulations, the tenant has the right to ***repudiate*** the residential tenancy agreement or to go to court to have a judge order the landlord to provide the premises.

The tenant can ask the judge for damages caused by the landlord for not providing the premises. If the landlord could reasonably have known that the tenant would suffer damages by not providing the premises, the tenant can ask the court for special damages.

The tenant should have compelling evidence and proof of damages to present to the court. It would be wise for the tenant to hire a lawyer to present the case.

FORMS

Notice to terminate and notice to vacate forms are available at a nominal cost from a number of organizations including the Landlord and Tenant Advisory Boards, the Calgary Apartment Association or the Edmonton Apartment Association.

The notice (and objection to the notice) has to be in writing and contain everything that the RTA requires. The RTA lists the content for the notices in the Residential Tenancies Ministerial Regulation. Landlords and tenants are free to prepare a form of notice that best suits their particular needs as long as the form has the content from the Regulation. The notice cannot take away any of the rights, benefits or protections contained in the Act.

SECURITY - KEYS & LOCKS ... NOVEMBER 1, 2004

STATUTORY REFERENCES

Residential Tenancies Act (RTA) *sections:*

1(1)(f)	*landlord definition*
1(1)(h)	*overholding tenant definition*
1(1)(l)	*residential premises definition*
1(1)(m)	*residential tenancy agreement definition*
1(1)(t)	*tenant definition*
1(2)	*reference to tenant*
16	*landlord's covenants (obligations)*
23	*entry of premises*
24	*locks and security devices*
31	*abandoned goods*

There are no sections in the Regulations relating directly to security-keys and locks.

GUIDELINES

At the beginning of a ***tenancy***, the ***landlord*** has to give the ***tenant*** a key for the ***residential premises***, main doors, mail box and any other ***common areas***, such as recreational or laundry rooms that the tenant has the right to access. The tenant must return all the keys at the end of the tenancy, including any extra keys the tenant had cut at their own expense. This helps keep the premises secure.

The RTA says that a landlord or a tenant shall not change or add to the locks on doors to the residential premises without the ***agreement*** of the other party. The agreement can be verbal or in writing.

However, the RTA also includes a provision that allows a landlord to change or add to the locks on doors giving access to the residential premises as long as the landlord gives a key to the tenant as soon as the change is made.[44]

If a landlord ***consents*** to a tenant's request to change or add to the locks, the tenant has to give the landlord a key as soon as the change or addition is made.[45]

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[44] **R. v. Baziuk, AB 1994, Alta. Prov. Ct. #31610819P10101-0201. Unreported.** Judge Broda in Provincial Court found the landlord placed a lock on the door of the residential premises without the consent of the tenant. The tenant was denied access to the residential premises and to his belongings. The tenant did not pay the full rent for the month. The landlord was found guilty and was fined $25.00.

[45] **Kovacs v. Inter Pro Property Corporation, AB 1989, Alta. Prov. Ct. #89001948. Unreported.** Judge H. F. Wilson in the Small Claims Division of Provincial Court. The tenant changed the locks and the landlord, who ***served*** a notice

A tenant is allowed to install a security device such as a chain lock that can only be used when the tenant is inside the residential premises. If the tenant adds this kind of security device, the tenant can do the following when the tenancy ends:

1. Leave the device and it becomes the property of the landlord, or
2. Remove the device and ***repair*** any holes in the door and the doorframe. If ***damage*** occurs, the tenant is responsible for the repairs.

Tenants are responsible for any damage or disturbance that is caused by the people who use the tenant's keys to enter the residential premises.

If the tenant fails to return the keys at the end of a tenancy, the landlord may change the lock and charge the tenant for the cost of the change.

PRACTICAL APPLICATIONS

If a tenancy has come to an end but the tenant has not yet moved out, the landlord cannot change the locks to prevent the tenant from entering the residential premises. The landlord cannot change the locks until the tenant has moved out of the residential premises. [46]

If the tenant does not move out at the end of the tenancy, the tenant becomes an ***overholding tenant***. The landlord must apply to ***court*** for an order to have the tenant move out. If the tenant still doesn't move, the landlord must then apply to court for a ***writ of possession*** that can be enforced by a ***civil enforcement bailiff***.[47] The locks cannot be changed until the tenant is actually out of the residential premises.

If a landlord determines that a tenant has ***abandoned*** the residential premises, the landlord may change the locks to ensure that the residential premises and the tenant's belongings, if any, are secure.[48]

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to enter the premises, did not gain access to show the residential premises to prospective tenants, as he did not have a key. The landlord suffered a rent loss for the next month as he was unable to rent the premises and was awarded the ***security deposit*** as compensation.

[46] **R. v. Hyshka, AB 2002, #017245986P1-01-001-002 & 02-001-002.** Judge A. Lefever in the Provincial Court of Alberta. The landlord took a frail, disoriented, and elderly man from a hospital bed to a bank for rent money. Before the tenancy ended, the landlord changed the locks and rented the suite to another tenant. The landlord pled guilty to changing the locks and was fined $2,000.

[47] **Burton v. Wright, 2000 ABPC 8.** Provincial Court Judge D.J. Plosz had to consider a dispute between a landlord and tenant that included amongst the various claims and counterclaims of the one against the other whether the landlord's actions, in moving the tenant's belongings out of the rented house and padlocking the doors, was justified given that every time the tenant had provided a rent cheque in the 4 months previous it had been returned NSF. The Judge commented that while the landlord's actions were, in some measure, understandable, they were clearly unlawful. The tenant was entitled to judgment against the landlord for damages suffered as a result of the unlawful acts.

[48] **Guterman v. Rasmussen, 2002 ABPC 71.** Provincial Court Judge D.G. Ingram considered the evidence from the landlord and the tenant, and their witnesses, concerning damage to the property. The tenant's notice of objection rendered the landlord's notice to terminate ineffective. The landlord took possession of the premises by changing all

If tenants want to add or change locks to increase security, they may do so if they have the landlord's permission and if they give the landlord a key for the new lock. The landlord has to be able to enter the residential premises at all times in case there is an emergency, such as a fire.

Tenants should not lend other people their keys or give out copies of their keys. Tenants are responsible for any damage or disturbance caused by the people who use the tenants' keys to enter the residential premises.

In summary, if a landlord adds to or changes locks without the ***consent*** of the tenant, they have to immediately provide a key to the tenant. If a tenant has the landlord's permission to add to or change locks, the tenant must immediately provide the landlord with the new key. In either case, if a key is not provided to the other party as soon as the addition or change is made, an offence has been committed under the RTA. A written complaint has to be made to Alberta Government Services before they can take action against the party who added to or changed the lock. {*See* "How to File a Consumer Complaint"}

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the locks. The Judge concluded that the tenant had abandoned the premises and the landlord's legal action was legitimate in seeking recovery of damages.

LANDLORD'S DISTRAINT ... NOVEMBER 1, 2004

STATUTORY REFERENCES

The landlord's right to ***distraint*** for recovery of ***rent*** arrears is a common law right that is covered in the *Civil Enforcement Act* and *Civil Enforcement Act Regulations*. It is therefore not mentioned in the *Residential Tenancies Act* (RTA) or the *Residential Tenancies Act Regulations*.

GUIDELINES

Distress is a ***remedy*** that a ***landlord*** can use to recover unpaid ***rent*** without having to go to ***court***. The process of distress allows a landlord to hire a ***civil enforcement agency*** to ***seize*** property on the rented premises that belongs to the ***tenant*** in order to recover rent money that is owed. The property can then be sold and the proceeds used to repay the rent and costs incurred by the landlord.

The right to use distress arises as soon as rent is late and the process must be carried out in accordance with the law. The landlord cannot use this process to recover other money owing by the tenant. The *Civil Enforcement Act* and Regulations outline the process that must be followed in the seizure of goods (effecting a distraint).

1. A seizure of the tenant's personal property may only be made through a civil enforcement agency by a ***civil enforcement bailiff*** on instructions from a landlord in the form of a Warrant of Distress.

2. Some property is generally exempt from seizure under the authority of a Warrant of Distress and is specified in the Information for Debtor form. (See #4 below)

3. At the time of a seizure, the ***tenant*** must be provided with a ***Notice of Objection to Seizure*** and Information for Debtor form. The tenant can complete the form if he or she wishes to object to the seizure of some or all of the property. The Notice of Objection to Seizure must be completed and ***served*** on the civil enforcement agency at the address shown within 15 days of the person being served with the seizure documents.

4. If a tenant objects to the seizure of property, the seized property cannot be sold without the court's permission.[49] However, if there is no valid reason for objecting to the seizure, the tenant may be responsible for paying the landlord's costs in taking the matter to court.

5. The landlord has priority over unsecured creditors.

6. If seized property has been pledged as security but the security interest has not been registered in the Personal Property Registry before the seizure, the landlord may have priority over that secured creditor in relation to that property.

7. Generally only the property on the premises at the time of the seizure that belongs to the tenant, and any relative living on the premises as a member of the tenant's family, as well as a person who is liable for rent, may be seized.

8. If there is no objection to the seizure, the seized property may be sold without a court order by any commercially reasonable manner.

9. Distribution of the proceeds of the sale of the seized property is in the following order:
   (1) All fees and charges for conducting the sale;
   (2) All fees and charges of the civil enforcement agency that effected the seizure;
   (3) All costs awarded by the court (if the matter required court application);
   (4) Rental arrears owed to the landlord; and
   (5) Any excess is returned to the tenant.

PRACTICAL APPLICATIONS

The common law remedy of landlord's distress is one that dates back almost a thousand years and is still available to the landlord today. Landlord's distress is a way to recover rent owing by a tenant. The landlord is responsible for the seizure costs, however, those costs can be added to the amount owed by the tenant. To satisfy those costs plus the amount owed for the rent arrears may require the seizure and sale of a significant portion of the tenant's property, or seizure and sale of items of significant value.

The ***tenancy*** continues during and after the distraint has been effected. This is because in order for the remedy to be available, there must be a legal relationship of landlord and tenant. If the tenancy is terminated, there is no such relationship, so the remedy of distress is not available to a previous landlord after ***termination*** of a tenancy. A landlord taking possession of the ***residential premises*** is a clear indication that a tenancy has been terminated.

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[49] **Fort McMurray Housing v. Royal Bank of Canada, 1999 ABQB 240.** Justice Lee in the Court of Queen's Bench ruled the sale of the chattel was invalid and therefore void. Seized property cannot be sold without the Court's permission if a notice of objection is filed.

The most important obligation of the tenant under the ***residential tenancy agreement*** and the RTA is to pay the rent in full, when it is due. If rent is not paid, for whatever reason, the landlord has the right to terminate the tenancy. In the alternative, landlords may choose to ***distrain*** for the arrears of rent owed.

- If the landlord terminates the tenancy, the landlord cannot distrain for arrears of rent.[50] The landlord can only bring an action in court for a judgment against the tenant for the amount of the arrears.
- If the landlord decides to distrain for arrears of rent, then the tenancy continues.

A landlord does not have to give the tenant any ***notice*** or go to court before distraining. Landlords have to use the services of a civil enforcement agency and civil enforcement bailiff to seize the tenant's property.

MORE INFORMATION

Current information about distress for rent owing is available under the following headings on the Alberta Courts website as follows:

www.albertacourts.ab.ca

Court Services
Sheriff Civil Enforcement
Civil Enforcement Procedure Manual
Landlord's Distress Seizure

[50] **Lansdowne Equity Ventures Ltd. v. Sandra Folland and Mike Davis, 2000 ABQB 809.** A decision of Master K.R. Laycock that discusses the issue of distress and termination of the tenancy. In this case, the landlord served a 14-day notice to terminate, and then seized property in distraint before the 14 days had expired. The tenant objected on the basis that the landlord, in serving the 14-day notice, had effectively terminated the tenancy at that point, and was not entitled to a remedy of distress. The Master held that while it is true that if the tenancy has ended the landlord cannot then distrain, where the landlord has served the 14-day notice to terminate and distrains before the 14 days have expired, the distraint is valid as the *Residential Tenancies Act* provides that the tenancy continues up to the 14th day from the date the notice was served.

APPENDICES

Court Cases Used in Code of Practice - Summaries . November 1, 2004

409205 Alberta Ltd. v. Alberta (Human Rights & Citizenship Commission) 2002 ABQB 681. Madam Justice L. J. Smith of the Court of Queen's Bench of Alberta dealt with a review on appeal of a decision made against a landlord by the Alberta Human Rights & Citizenship Commission. The Commission determined that the landlord had "raised the rent" of the tenant for no other reason than to "get rid of them". The landlord was found to have discriminated against the tenant on the basis of the tenant's income, and the Justice did not disturb the decision by the Alberta Human Rights & Citizenship Commission.

Braden Equities Inc. v. Norman, 2003 ABQB 208. Court of Queen's Bench Master Funduk reviewed the landlord's earlier lawsuit against the tenant where a Master gave an order terminating the tenancy and requiring the tenant to deliver possession. A writ of possession had been issued on April 5, 2002. The Master declined to grant a second order for possession as the landlord should exercise the order and the writ it got. One writ of possession is enough. Piling writs on writs achieves nothing.

Burton v. Wright, 2000 ABPC 8. Provincial Court Judge D.J. Plosz had to consider a dispute between a landlord and tenant that included amongst the various claims and counterclaims of the one against the other whether the landlord's actions, in moving the tenant's belongings out of the rented house and padlocking the doors, was justified given that every time the tenant had provided a rent cheque in the 4 months previous it had been returned NSF. The Judge commented that while the landlord's actions were, in some measure, understandable, they were clearly unlawful. The tenant was entitled to judgment against the landlord for damages suffered as a result of the unlawful acts.

Christian Senior Citizens Homes of Northern Alberta v. Zilinski, 1998 ABQB 852. Master Walter Breitkreuz in Chambers of the Court of Queen's Bench of Alberta determined that certain complaints about the tenants were insufficient to warrant termination for substantial breach.

Coon v. Beck, 1999 ABQB 140. A decision of Master Funduk in the Court of Queen's Bench of Alberta. The landlord had failed to comply with an order under the Safety Codes Act, the building code and the building permit bylaw. The suites were illegal suites in what was supposed to be a duplex dwelling. The landlord gave notices of termination that the property had been sold. The tenants suggested that the landlord had not really sold the property and that the sale was fictitious. The tenants each had a room and they apparently shared the kitchen and bathroom. The Master determined that the RTA does not override illegal suites and the tenants had to vacate.

Corlis v. St. Croix, 2002 ABPC 19. A decision of Provincial Court Judge A. H. LeFever. This case was primarily concerned with whether a purported "inspection" by the landlord in the absence of the tenant, on the grounds advanced by the landlord that the tenant had abandoned the place. The Judge ruled that the landlord did not make reasonable efforts to contact the tenant to arrange the inspection.

Corlis v. St. Croix, 2002 ABPC 19. Provincial Court Judge A.H. Lefever reviewed the legislation and previous decisions and concluded that while the landlord may not apply security deposit monies to repairs and cleaning when there have not been the required inspections, no general limitation is created to stop a landlord from starting an action for damages because of alleged breaches of a residential tenancy agreement.

Corlis v. St. Croix, 2002 ABPC 19. A decision of Provincial Court Judge A.H. LeFever. There are a number of issues dealt with in this case, but it is primarily a case concerned with whether the landlord validly conducted the alleged move-out inspection in the tenant's absence. After examining the evidence, the judge came to the conclusion that a landlord has an obligation under the Act to endeavor to contact the tenant and arrange for the move-out inspection report. A landlord must show to the Court that at least some reasonable steps have been taken without success in that regard before the Court will allow deduction from the security deposit in accordance with *section 48(6)*. But even so, the judge concluded that the landlord's failure to properly conduct the inspection report did not stop the landlord from taking legal action.

Cracknell v. Jeffrey, 2001 ABPC 11. A decision of Provincial Court Judge J N. LeGrandeur. In this case, the landlord claimed a "late payment fee" of $5.00 per day for 30 days, on unpaid rent ($150.00). The Judge carefully examined the law relating to "legitimate pre-estimate of liquidated damages" and "penalties", and came to the conclusion that, in this instance, the so-called "late payment fee" was in law a "penalty", and as such would not be allowed by the Court. In summary, the Judge said, *[15] whether the sum claimed is a penalty or a genuine pre-estimate of damage is a question of law to be decided upon consideration of the whole agreement. (Reimer v. Rosen, [1919] 1 WWR 429,*

Man.C.A.) Although the parties to a contract may always try to make a pre-determination as to damages, should the contract be breached, this must always yield to judicial approval of its reasonableness in the circumstances. (See: H.F.Clarke Ltd. v. Thermidaire Corporation Ltd., (1975) 54 DLR (3d) 385 per Laskin, CJC at 393) That approach is consistent with the principle that an injured party is entitled to be compensated and made whole, but not bettered by a damage award. (See: Neunier v. Cloutier, (1984) 9 DLR (4th) 986).

Demeter v. Demeter, 1999 ABQB 1061. Court of Queen's Bench Master Breitkreuz ruled that the reason in the notice to terminate this periodic tenancy was not one of the reasons in the regulations. The landlord will have to provide a new notice after he is able to satisfy one of the reasons set out in the regulations. The case was dismissed.

Dorland Property Management v. Hood, 2000 ABPC 165. Judge D.G. Ingram in Provincial Court ruled that the discounted rent of $90 was strictly contractual. The penalty clause in this case was unconscionable and oppressive because the landlord terminated the lease and the claim for discounted rent was dismissed.

Dubois v. McCallum, 2002 ABPC 4. A decision of Provincial Court Judge A.H. LeFever. This case contains elements of just about everything that can go wrong in a relationship between a landlord and tenant. It is included here for reference because of the many complaints by both the landlord and the tenant against the other were alleged improprieties in relation to both the move-in and move-out inspections. Both parties were held responsible for repairs.

Fort McMurray Housing v. Royal Bank of Canada, 1999 ABQB 240. Justice Lee in the Court of Queen's Bench ruled the sale of the chattel was invalid and therefore void. Seized property cannot be sold without the Court's permission if a notice of objection is filed.

Guterman v. Rasmussen, 2002 ABPC 71. Provincial Court Judge D.G. Ingram considered the evidence from the landlord and the tenant, and their witnesses, concerning damage to the property. The tenant's notice of objection rendered the landlord's notice to terminate ineffective. The landlord took possession of the premises by changing all the locks. The Judge concluded that the tenant had abandoned the premises and the landlord's action was legitimate in seeking recovery of damages.

Jusza v. Dobosz, 2003 ABQB 583. Court of Queen's Bench Justice Donald Lee ordered termination of the tenancy on or before July 15, 2003 to follow the strict terms of the tenancy agreement between the parties.

K. Hansen Masonry Ltd. v. Trautman, 2002 ABQB 166. A landlord started the usual lawsuit as the tenant failed to pay rent when due. The building and suite were not unfit for human occupancy and the tenant could not withhold rent because of problems with the building or suite. Court of Queen's Bench Master Funduk had ordered the tenant to pay the outstanding rent into Court and the tenant was ordered to vacate the premises.

Klass Construction Ltd. v. Brown, 2000 ABQB 488. Court of Queen's Bench Master Funduk granted an order of possession, as it was clear the tenant did not pay all the month's rent.

Klys v. Foster, 2000 ABPC 23. Provincial Court Judge Jerry N. LeGrandeur found the tenant responsible for damage caused by her dog and for cutting and removal of weeds. The tenant had a duty under the tenancy agreement to maintain the yard area.

Kovacs v. Inter Pro Property Corporation, AB 1989, Alta. Prov. Ct. #89001948. Unreported. Judge H. F. Wilson in the Small Claims Division of Provincial Court. The tenant changed the locks and the landlord, who served a notice to enter the premises, did not gain access to show the residential premises to prospective tenants, as he did not have a key. The landlord suffered a rent loss for the next month as he was unable to rent the premises and was awarded the security deposit as compensation.

Lansdowne Equity Ventures Ltd. v. Sandra Folland and Mike Davis, 2000 ABQB 809. A decision of Master K.R. Laycock that discusses the issue of distress and termination of the tenancy. In this case, the landlord served a 14-day notice to terminate, and then seized property in distraint before the 14 days had expired. The tenant objected on the basis that the landlord, in serving the 14-day notice, had effectively terminated the tenancy at that point, and was not entitled to a remedy of distress. The Master held that while it is true that if the tenancy has ended the landlord cannot then distrain, where the landlord has served the 14-day notice to terminate and distrains before the 14 days have expired, the distraint is valid as the *Residential Tenancies Act* provides that the tenancy continues up to the 14th day from the date the notice was served.

Lyman v. 637568 Alberta Ltd., 1999 ABPC 74. A decision of the Provincial Court Assistant Chief Judge Donald E. Patterson. The tenant sued the landlord for return of a $600.00 security deposit, notwithstanding her admission to the court that her boyfriend had been responsible for some $20,000.00 damage to the building. Additionally, the tenant

was responsible for a cricket infestation of the building, having brought live crickets into her suite as food for a pet gecko, and 3 consecutive rent cheques had been returned N.S.F.

However, after serving the tenant a Notice to Vacate, and the tenant vacating the place, the landlord had failed to return the security deposit or provide a statement of account within the 10 days specified by the Act, and this formed the basis for the tenant's claim for return of the security deposit.

After first concluding that the failure of the landlord to comply with the provisions of *RTA section 48(2)* precluded the landlord from making a deduction from the security deposit, the Judge went on to decide that because the tenant had brought the action under *s. 48(3)*, then pursuant to *s. 48(4)* the court was entitled to determine the actual damages suffered by the landlord that it would have been entitled to deduct from the security deposit, had *s. 48(2)* been complied with. In this instance, the actual damages exceeded the amount of the security deposit, so the landlord was entitled to judgment for the balance left owing after deducting the full amount of the security deposit from the damages.

Also of some interest in this case is that the landlord claimed a "late rent charge" of $10.00 a day for the days between the time the tenant's 3 cheques were returned N.S.F. and she made good on them. The Judge, without any reason given, did not allow this claim by the landlord.

Lyman v. 637568 Alberta Ltd., 1999 ABPC 74. A decision of Provincial Court Assistant Chief Judge Donald E. Patterson. This case from Grande Prairie, primarily concerned with issues surrounding return of a security deposit when there has been extensive damage, illustrates what can happen in this circumstance. At the time of entering into the tenancy agreement, even though the landlord had a "no pets" policy, the tenant persuaded the landlord to allow her to keep her pet gecko - but she didn't tell the landlord that her pet gecko required live crickets as food. Some of the crickets escaped, and the building became infested with crickets, requiring fumigation. The landlord was entitled to deductions from the security deposit in accordance with the conditions agreed to by the tenant.

MacNeill v. North American Leaseholds Ltd., AB 1980, 118 D.L.R. (3d) pp. 37-39. Provincial Court Judge D. E. Patterson found that in this case, the condition of the carpets and drapes was clearly caused by normal use only. The landlord could not deduct for further professional cleaning. The tenant was not excused from usual and ordinary cleaning or cleaning up from abnormal use. The landlord appealed the decision and Court of Queen's Bench Justice J. Stevenson dismissed the appeal.

Midwest Property Management v. Moore, 2003 ABQB 581. The tenant failed to comply with the eviction notice. The Court granted the landlord's application for termination of the tenancy. Court of Queen's Bench Madam Justice C.I. Johnstone denied the tenant's claim for damages, abuse of process, defamation, punitive damages and personal injury.

Munro v. Rusynyk, 2002 ABPC 107. Provincial Court Judge LeGrandeur considered whether there was, on the evidence, arrears of rent as alleged by the landlord. The judge found there were no arrears in rent. The tenant did repair work to offset rent as per the agreement between the parties. The application for termination of tenancy was dismissed.

R. v. Baziuk, AB 1994, Alta. Prov. Ct. #31610819P10101-0201. Unreported. Judge Broda in Provincial Court found the landlord placed a lock on the door of the residential premises without the consent of the tenant. The tenant was denied access to the residential premises and to his belongings. The tenant did not pay the full rent for the month. The landlord was found guilty and was fined $25.00.

R. v. Erin Blacklaws, 1996 Alta Prov Ct. #960188745P101001 - 002, 960913605P101001. A decision of Provincial Court Judge Maher. The landlord without justification or excuse entered the tenant's residential premises unannounced to look for something belonging to the landlord that might have been stolen by the tenant. The entry of the premises by the landlord was a breach of the RTA.

R. v. Hyshka, AB 2002, #017245986P1-01-001-002 & 02-001-002. Judge A. Lefever in the Provincial Court of Alberta. The landlord took a frail, disoriented, and elderly man from a hospital bed to a bank for rent money. Before the tenancy ended, the landlord changed the locks and rented the suite to another tenant. The landlord pled guilty to changing the locks and was fined $2,000.

R. v. Cecil James Speirs, 1993. A decision of Provincial Court Judge Nemirsky. The forcible entry by a landlord caused a breach of the peace, or at least a reasonable apprehension of a breach of the peace, and will not be tolerated. Mr. Speirs was found guilty as charged under section 72(1) of the Criminal Code.

R. v. Touche Ross Limited et al., (AB, 1985) Q.B. #8503-0034-56. Receiver Managers appointed by court order incur the landlord's responsibility for refunding security deposits. The Alberta Court of Appeal dismissed the appeal of this judgment.

Rempel v. Fettig, 2002 ABPC 81. A decision of Provincial Court Judge J.N. LeGrandeur. This case is instructive because even though there was a move-in inspection report and the tenants took the place in the condition it was in (which was not good), it was held that they were entitled to damages by way of abatement of rent when the premises was condemned under the *Public Health Act* some 6 months after they had moved in. The Judge conducted an extensive review of decisions concerning the "habitability" of rental premises and concluded that the onus is on the landlord to ensure habitability at the time the tenants move in, and to maintain habitability thereafter:

"[32] The subject premises in this case were not habitable at the time the tenants took possession, nor did that change during the currency of their possession. These premises could not be dwelled in safely, in the sense of the health of the occupants, nor did the condition of the premises allow the occupants to live in reasonable comfort, having regard to the intended use of the premises. I am satisfied that the conditions noted by the health inspector which led to the Executive Officers Order (Exhibit #2) were in existence at the time the tenants took occupation. The fact that the tenants resided in the residence for some six months does not change that fact, nor may it be seen as some sort of a waiver by the Plaintiffs."

Sabetai Grunberg Profession Corporation v. Richard, 1998 ABPC 85. Judge B.E. Scott in the Civil Division of Provincial Court found that the alleged failure of the landlord to repair was exaggerated. The Judge allowed recovery of arrears and certain repairs, after credit of security deposit.

Sayers v. Lazaruk, 1998 ABPC 47. Provincial Court Judge J.N. LeGrandeur ruled that the evidence must demonstrate an act of omission by the landlord caused the flooding of the basement of the residential premises before it can be said that the ***covenant*** for peaceful enjoyment is breached. The landlord did not intentionally cause the flooding of the premises, or intentionally interfere with the operation of the sump pump.

Seaton v. Bernard, 2001 ABPC 182. Provincial Court Judge Jerry N. LeGrandeur confirmed tenants or their guests must not damage the premises or common areas wilfully or negligently.

Snethun v. Carson, 1998 ABPC 49. Provincial Court Judge J.N. LeGrandeur ruled that the landlord breached the landlord's covenant by entering the premises and changing the locks, with full knowledge that the tenant had not abandoned the premises. The landlord repudiated the tenancy and cannot have both the termination of the tenancy and the rent after the termination date.

Terrigno Investments Inc. v. Constant, 2003 ABQB 335. Justice A.G. Park in the Court of Queen's Bench found the landlord vicariously liable when his son caused the police to forcibly break down the doors of the residential premises after the son misrepresented facts to the police that were later recanted.

Trump Developments Ltd. v. Pipke, 2000 ABQB 197. Court of Queen's Bench Master Alberstat ruled that a corporate landlord cannot terminate the periodic tenancy for occupation of the premises by a corporate shareholder or a family member of a corporate shareholder. A corporate landlord is not a landlord for the purposes of obtaining possession. The case was dismissed.

Van Zant v. Thomson, 2002 ABQB 1077. Justice Sterling Sanderman in the Court of Queen's Bench found the residential tenancy agreement was prepared by the landlord and accepted by the tenants. The responsibility of paying for certain utilities was clearly set out. The landlord was responsible for water and heat during the tenancy as per the agreement.

Waverly Management Ltd. v. Sobie and Dunn, AB 1985, 39 Alta. L.R. (2D) pp. 51-59. Waverly was appointed receiver manager through foreclosure proceedings and refused to refund the tenant's security deposit. Provincial Court Judge Irwin Blackstone found Waverly responsible for the security deposit refund under the tenancy legislation even though the deposits were not obtained from the former landlord. Waverly's appeal was dismissed.

RESOURCES AND REFERRAL INFORMATION

Provincial Court of Alberta

Landlords and tenants who wish to make an application to the court under the RTA should obtain the booklet: *"Application in Provincial Court of Alberta under the Residential Tenancies Act or Mobile Home Sites Tenancies Act-Instructions for Landlords and Tenants"*. To make an application, landlords and tenants will need to obtain the required forms and follow all the instructions provided in the booklet.

The booklet is available at Provincial Court locations or online at:
http://www.albertacourts.ab.ca/pc/civil/publication/rta.pdf

Landlord and Tenant Advisory Boards

These organizations answer residential tenancy questions from both landlords and tenants. They also make tenancy forms available (for a fee).

Edmonton
(Edmonton residents only)
Phone: (780) 496-5959
web: www.edmonton.ca - Click on: Community & People Services → Housing Services → Landlord & Tenant Advisory Board

Fort McMurray
Regional Municipality of Wood Buffalo
Phone: (780) 743-5000
web: www.woodbuffalo.ab.ca/landlord

Landlord and Tenant Information Services

Red Deer Landlord and Tenant Service
(Red Deer and District residents)
Phone: (403) 343-0410
web: http://www.mycommunityinformation.com/llt/

Medicine Hat Community Housing Society
Landlord and Tenant Information Office
(Medicine Hat residents only)
Phone: (403) 528-4660
web: www.mhchs.ca/landlord

Landlord Associations

Calgary Apartment Association
Phone: (403) 265-6055
web: www.calapt.org/

Edmonton Apartment Association
Phone: (780) 413-9773
web: www.eaa.ab.ca/

Other Referrals

Residential Tenancies Tipsheet
www.gov.ab.ca/gs under Landlord and Tenant

Residential Tenancies Act Code of Practice
www.gov.ab.ca/gs under Landlord and Tenant

Laws for Tenants in Alberta
www.landlordandtenant.org

A *Reference Guide to Landlord and Tenant Law in Alberta*
www.acjnet.org/docs/landten/index.html

Canada Mortgage and Housing Corporation "*Your Guide to Renting a Home*"
www.cmhc-schl.gc.ca/en/bureho/reho/index.cfm

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10611 98 Avenue
Edmonton, AB T5K 2P7
Phone: (780) 427-4952

COMMENT FORM Complete and return to:
or
Complete online at
www.gov.ab.ca.gs
Click on: Landlord and Tenant

Alberta Government Services
Consumer Services
3C, 10155 – 102 Street
Edmonton, AB T5J 4L4
Fax: (780) 427-3033

We would like your comments on the Code of Practice for the Residential Tenancies Act and Regulations. Your comments assist us with ensuring that the Code is meeting the needs of our users and enables us to provide continuous improvements. Your answers are kept strictly confidential and you are in no way obligated to provide any personal information.

SECTION I

On a scale of "1" to "7", with "1" being "extremely dissatisfied", "4" being "neutral" and "7" being "extremely satisfied" please rate the following topic areas with regards to the Code of Practice for the *Residential Tenancies Act* and Regulations.

A: Clarity of Information (Is the information presented clearly)

Extremely Dissatisfied			Neither Satisfied nor Dissatisfied			Extremely Satisfied
1	2	3	4	5	6	7

Comments:

B: Readability (Is the information easy to read)

Extremely Dissatisfied			Neither Satisfied nor Dissatisfied			Extremely Satisfied
1	2	3	4	5	6	7

Comments:

C: Layout and Design (Is the information presented appropriately)

Extremely Dissatisfied			Neither Satisfied nor Dissatisfied			Extremely Satisfied
1	2	3	4	5	6	7

Comments:

D: Overall Satisfaction with the Code of Practice for the *Residential Tenancies Act* and Regulations.

Extremely Dissatisfied			Neither Satisfied nor Dissatisfied			Extremely Satisfied
1	2	3	4	5	6	7

Comments:

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SECTION II

A: In what way(s) was this Code most valuable to you?

Comments:

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B: Is there anything you would like to see added, deleted or changed?

Comments:

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C: Do you reference a paper or electronic version of the Code of Practice?

☐ PAPER ☐ ELECTRONIC

D: Is there anything else you would like to comment on with regards to the Code of Practice for the *Residential Tenancies Act* and Regulations?

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Thank you for your time and comments.